

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1478

77-1478, 77-1479

In The
UNITED STATES COURT OF APPEALS
For the Second Circuit

B
P/S

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

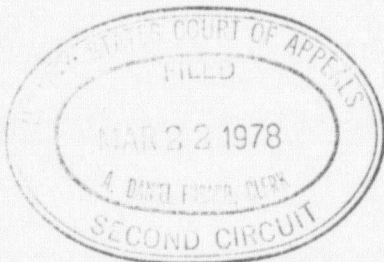
vs.

DANIEL LEE RUCKER and
EUGENE C. SMITH,

Defendants-Appellants.

Appeal from a Judgment of Conviction in the
United States District Court for the
Western District of New York at 76-181

JOINT APPENDIX FOR THE DEFENDANTS-APPELLANTS



MICHAEL R. WOLFORD, ESQ.,
Attorney for the Defendant-
Appellant Eugene C. Smith
Lincoln First Tower
Rochester, New York 14603

DAVID G. LARIMER, ESQ.
Attorney for the Defendant-
Appellant Daniel Lee Rucker
240 Reynolds Arcade Building
Rochester, New York 14614

PAGINATION AS IN ORIGINAL

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Filed 12/2/76

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

DANIEL LEE RUCKER
EUGENE SMITH

MAY 1976 SESSION

No. 76-131

Vio. T. 18, U.S.C.,
§§2113(a), 2 and 3

COUNT I

The Grand Jury charges:

On or about May 14, 1976 in the Western District of New York DANIEL LEE RUCKER, did enter the Marime-Midland Bank, 1500 Hudson Avenue, the deposits of which were insured by the Federal Deposit Insurance Corporation, with intent to commit a felony affecting that bank, that is, the taking by force and by violence and by intimidation in the presence of the employees of the bank, money belonging to and in the care, custody, control, management and possession of the bank, all in violation of Title 18, United States Code, Section 2113(a) and Section 2.

COUNT II

The Grand Jury further charges:

On or about September 29, 1976, EUGENE SMITH and DANIEL LEE RUCKER did enter the First National Bank, Georgetown Plaza Branch, the deposits of which were then insured by the Federal Deposit Insurance Corporation, with intent to commit a felony affecting such bank, that is, the taking by force and by violence and by intimidation from the presence of employees of such bank money belonging to and in the care, custody, control management and possession of the bank, all in violation of Title 18, United State Code, Section 2113(a) and Section 2.

COUNT III

The Grand Jury further charges:

From on or about May 8, 1976, and continuously thereafter up to and including the date of the filing of this indictment in the Western District of New York, DANIEL LEE RUCKER, the defendant, wilfully and knowingly did combine, conspire, confederate and agree with ROBERTO LOUIS RIVERA, named herein as co-conspirator but not as a co-defendant and with diverse other persons to the Grand Jury unknown, to commit the following offense against the United States, to wit, a violation of Title 18, United States Code, Section 2113, to wilfully and knowingly enter the Marine-Midland Bank, 1500 Hudson Avenue, Rochester, New York, and by force and violence and by intimidation take from the employees of that bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, a sum of money belonging to and in the care, custody, control, management and possession of that bank, all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the object thereof, the defendant performed the following acts:

1. On or about May 12, 1976, DANIEL LEE RUCKER had a conversation with ROBERTO LOUIS RIVERA.
2. On or about May 12, 1976, ROBERTO LOUIS RIVERA entered the Marine-Midland Bank, located at 1500 Hudson Avenue, Rochester, New York.
3. On or about May 14, 1976, DANILE LEE RUCKER had a conversation with ROBERTO LOUIS RIVERA.
4. On or about May 14, 1976, ROBERTO LOUIS RIVERA entered the Marine-Midland Bank, 1500 Hudson Avenue, Rochester, New York.

COUNT IV

The Grand Jury further charges:

On or about September 29, 1976, and continuously thereafter up to and including the date of the filing of this indictment in the Western District of New York, DANIEL LEE RUCKER and EUGENE SMITH the defendants, wilfully and knowingly did combine, conspire and confederate and agree with each other and with Eddie Lee Brown, named herein as a co-conspirator but not as a co-defendant, and with diverse other persons to the Grand Jury unknown, to commit the following offense against the United States to wit: a violation of Title 18, United States Code, Section 2113, to wilfully and knowingly enter the First National Bank, Georgetown Plaza Branch, and by force and violence and by intimidation take from the employees of that bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, a sum of money belonging to the care, custody, control, management and possession of that bank, all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and to effect the object thereof, the defendant performed the following acts:

1. On or about September 29, 1976, DANIEL LEE RUCKER, EUGENE C. SMITH and EDDIE LEE BROWN had a conversation.
2. On or about September 29, 1976, Eddie Lee Brown did enter the First National Bank, Georgetown Plaza Branch.
3. On or about September 29, 1976, DANIEL LEE RUCKER and EUGENE C. SMITH each had a conversation with Eddie Lee Brown in the Gold Circle Store, near the First National Bank, Georgetown Plaza Branch.

RICHARD J. ARCARA
United States Attorney

A TRUE BILL:

Foreman

PO JUDGE/MAGISTRATE Assigned U.S. vs RUCKER, DANIEL LEE 4

MO 209 1 0902

Case Filed Mo Day 12 2

76 181 1

No. of Units 2

JUVENILE

U.S. MAG. CASE NO

Yr District No Dist

U.S. TITLE SECTION 2113(a) 2 18-371

OFFENSES CHARGED ORIGINAL COUNTS 2

Bank Robbery by Force and Violence (Ct. 1, 2) 2

Conspiracy to commit bank robbery by force and violence (Ct. 3)(Ct. 4)

U.S. MAG. CASE NO

BAIL - RELEASE

AMT Fugitive

Denied Set Pers. Recog

PSA

\$10,000

Date 12/6/76

10% Deposit

Surety Bond

Bail Not Made

Collateral

Status Changed (See Docket)

3rd Pny Cust Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Begon 12/6/76

High Risk Date

INDICTMENT Information 12/2/76

Inc. at Waived

Superseding Indict/Info

ARRAIGNMENT 12/6/76

1st Plea 12/6/76

Final Plea

TRIAL Trial Set For 10/17

Trial Began 10/24/77

Trial Ended 10/27/77

SENTENCE Disposition 10/27/77

11/21/77

On All Charges

On Lesser Offense(s)

Convicted

Acquitted

Dismissed

On Government Motion

MAGISTRATE

Search Warrant Issued Return

Summons Issued Served

Arrest Warrant Issued

COMPLAINT

DATE INITIAL/NO

INITIAL APPEARANCE DATE

PRELIMINARY EXAMINATION OR REMOVAL HEARING

DATE Scheduled Date Held

WAIVED NOT WAIVED

INTERVENING INDICTMENT

Tape Number

OUTCOME DISMISSED

HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst. Gerald Houlihan

ATTORNEYS Defense CJA Ret. Waived Seil. None / Other PD CD

David J. Larimer

Show last names and suffix numbers of other defendants on same indictment/information

(2) SMITH, EUGENE

DATE (DOCUMENT NO.) PROCEEDINGS EXCLUDABLE DELAY

12/2/76 Filed Indictment

12/2/76 Warrant of arrest issued - Rochester.

12/6/76 Arraignment. Defendant present without counsel, request the Court to assign counsel. Defendant is sworn and answers questions regarding financial status. The Court will assign a lawyer. A not guilty plea is entered for the Defendant. Bail is set at \$10,000.00 cash.

12/14/76 Filed Deft s warrant of arrest - executed 12/6/76

12/30/76 Filed defts' notice of motion for discovery and inspection and bill of particulars on behalf of deft. Smith.

1/13/77 Filed Deft's notice of motion for discovery and Inspection and Bill of Particulars ret. 1/24/77-Roch.

DATE	PROCEEDINGS (continued)	PAGE TWO	EXHIBITABLE COPY
1/18/77	Filed \$500 surety bond - Stuyvesant Ins., Co., surety		
12/10/76	- Filed copy 5 CJA 20 order appointing counsel. Copy 4 to adm. Office, remaining copies to Atty for submission of voucher. BURKE, J.		
1/24/77	Motion by Deft. for discovery and Inspection, etc. Adj. at the request of the Government 2/14/77.		
2/14/77	Motion by deft. for discovery & inspection, etc., to be submitted 2/23/77		5 3/24/77
2/22/77	Filed Govt's response to defendant's motion		
6/27/77	Deft's motion for discovery and inspection, etc. is denied in part. BURKE, J.		
6/28/77	Filed Govt's Notice of Motion & Motion to set a dt. for trial returnable 7/11/77.		
7/11/77	Motion by Govt. to set date for trial. The Govt. is ready for trial.		
9/19/77	Filed Govt's notice of motion & motion to set a dt. for trial, ret. 9/26/77.		
9/26/77	Motion by Govt. to set dt for trial. The Govt & the defts are ready for trial. Trial dt 11/22/77.		
10/20/77	Filed Govt's response to deft's motion to dismiss. *filed & ret. in Roch.		
10/17/77	Case presently set for trial on 11/22/77. The Govt. is ready for trial. Counsel for deft Rucker requests 11/22 trial date remain. The Ct. directs that a jury be picked today & trial proceed on 10/24/77.		
10/17/77	Case moved ready for trial. The jury is duly selected but not sworn. Trial is adj. until Oct. 24, 1977.		
10/18/77	Filed deft's motion & notice of motion for dismissal-ret. 10/24/77		
10/24/77	After hearing motions by defense counsel for dismissal for lack of speedy trial, the Crt finds that the govt has complied w/Speedy Trial Act. Motions are denied. Deft Smith moves for severance. Denied. Jury selected Oct. 17, 1977 is duly sworn & instructed by the Crt. Mr. Welch opens for the govt. Mr. Wolford opens for deft Smith. Mr. Larimer for deft Rucker, reserves opening statement. Witnesses for Govt. Trial is adj. until tomorrow. (Platt, J. V.J.)		
10/25/77	Trial continues fr yesterday w/the same appearances. Witnesses for the govt. Trial adj. until tomorrow.		

EXHIBIT NO.

RECEIVED

DATE 1977	PROCEEDINGS (continued)	V. EXCLUDABLE DE		
	(Document No.)	(a)	(b)	(c)
11/21/77	Deft Rucker moves for judgment of acquittal or a new trial. Denied. The Crt finds that the Youth Correction Act is not appropriate in the case of deft Rucker because of his record. On motion of AUSA Houlihan, deft Rucker is sentenced as follows: The Crt: It is adjudged on Count One of the indictment that the deft is hereby committed to the custody of the A/G or his authorized representative for imprisonment for a term of twelve yrs. & that the deft shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the Parole Commission may determine. It is adjudged on Count Three of the indictment that the deft is hereby committed to the custody of the A/G or his authorized representative for imprisonment for a term of five years & that deft shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the Parole Commission may determine. Such sentence imposed under Ct. 3 to run concurrently w/the sentence imposed under Count 1. It is adjudged on Ct. 2 of the indictment that the deft is hereby committed to the custody of the A/G or his authorized representative for imprisonment for a term of twelve years & that deft shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the Parole Commission may determine. Such sentence imposed under Count Two to run concurrently w/the sentences imposed under Cts. 1 & 3. It is adjudged on Count 4 of the indictment that the deft is hereby committed to the custody of the A/G or his authorized representative for imprisonment for a term of five yrs. & that deft shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the Parole Commission may determine. Such sentence imposed under Ct. 4 to run concurrently w/the sentences imposed under Cts. 1, 3 & 2 of the indictment. Deft Rucker requests bond be reduced pending appeal fr \$10,000.00 to \$5,000.00. Denied. Appearances: David Larimer, Esq. for deft Rucker. AUSA Houlihan for govt. PLATT, J., V.J.			

CLOSED *Appeal*

JUDGE/MAGISTRATE Assigned: **SMITH, EUGENE**
 Case No: **209 1 0902**
 District: **1** Office: **0902**
 U.S. vs. **SMITH, EUGENE**
 (LAST, FIRST, MIDDLE)
 Case Filed Mo/Day: **12/2/76**
 No. of Defs: **2**
 Yr: **76** Docket No: **181** Def: **2**
 JUVENILE

U.S. TITLE/SECTION: **8-2113(a)**
2
18-371
 OFFENSES CHARGED:
Bank Robbery by force and violence (Ct. 2)
Conspiracy to commit bank robbery by force & violence (Ct. 4)
 ORIGINAL COUNTS: **1**
1

U.S. MAG. CASE NO.
 BAIL • RELEASE
 AMT: **\$10,000**
 Date: **12/6/76**
 Conditions:
☒ 10% Deposit
☒ Surety Bond
☐ Collateral
☐ 3rd Party Cust
☐ Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began: **12/6/76**
 Summons Served: **12/6/76**
 First Appearance: **12/6/76**
 INDICTMENT Information: **12/2/76**
 High Risk Date: **12/6/76**
 Indict. Waived: ☐
 In Charging District: ☐
 ARRANGMENT: **12/6/76**
 Trial Set For: **12/6/76**
 Trial Began: **10/17/77**
 Trial Ended: **10/27/77**

SENTENCE
 Disposition of Charges:
☒ Convicted
☐ Acquitted
☐ Dismissed
☐ On Government's Motion
☒ On All Charges
☐ On Lesser Offense(s)
☐ WOP
☐ WP

MAGISTRATE
 DATE: **12/6/76** INITIAL/NO.: **12/6/76**
 INITIAL APPEARANCE DATE: **12/6/76**
 PRELIMINARY EXAMINATION OR REMOVAL HEARING: ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT
 OUTCOME: ☐ DISMISSED
☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst. ATTORNEYS Defense ☒ J.A. ☐ Ret. ☐ Waived ☐ Self. ☐ None / Other. ☐ P.D. ☐ C.D.

Gerald Houlihan Michael Wolford

Show last names and suffix numbers of other defendants on same indictment/information.

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
12/2/76		Filed Indictment	
12/2/76		Warrant of arrest issued - Rochester	
12/6/76		Arraignment. Deft. present without counsel, requests the Court to assign counsel. Deft. is sworn and answers questions regarding financial status. The Court will assign a lawyer. A not guilty plea is entered for the defendant. Bail is set at \$10,000 cash.	
12/14/76		Filed def't's warrant of arrest - executed 12/6/76	
12/23/76		Filed def't's application for reduction of bail.	
12/30/76		Filed def't's notice of motion for discovery and inspection and bill of particulars on behalf of def't.; Ret. 1/10/77 - Roch.	

(over)

1/10/77 Motion by deft. Smith for discovery and inspection and bill of particulars. Adj. 1/24/1977

1/10/77 \$500.00
Filed/Surety bond - Midland Insurance Co., surety - bond executed 1/7/77

12/10/76 Filed copy 5 CJA 20 order appointing counsel. Copy 4 to Adm. Office., remaining copies to Atty. for submission of voucher. BURKE, J.

1/24/77 Motion by Deft. for discovery and inspection, etc. Adj. at the request of the Government 2/14/77

2/14/77 Motion for discovery and inspection, etc., to be submitted 2/23/77

2/22/77 Filed Govt's response to deft's motion

6/27/77 Filed decision denying deft's motion for discovery and inspection, etc., in part only. BURKE, J.

6/28/77 Filed Govt's Notice of Motion & Motion to set a dt. for trial returnable 7/11/77.

7/11/77 Motion by Govt. to set date for trial. The Govt. is ready for trial.
Appearances: Thomas Richards, Esq. for deft. Smith. AUSA Houlihan for Govt.

9/19/77 Filed govt's notice of motion & motion to set a dt. for trial, ret. 9/26/77.

9/26/77 Motion by Govt to set dt for trial. The Govt & the defts are ready for trial. Trial dt 11/22/77.

10/17/77 Case presently set for trial on 11/22/77. The Govt. is ready for trial. Counsel for deft Rucker requests 11/22 trial date remain. The Ct. directs that a jury be picked today & trial proceed on 10/24/77.

10/17/77 Case moved ready for trial. The jury is duly selected but not sworn. Trial is adj. until Oct. 24, 1977.

10/24/77 After hearing motions by defense counsel for dismissal for lack of speedy trial, the Crt finds that the govt has complied w/Speedy Trial Act. Motions are denied. Deft Smith moves for severance. Denied. Jury selected Oct. 17, 1977 is duly sworn & instructed by the Crt. Mr. Welch opens for the govt. Mr. Wolfor opens for deft Smith. Mr. Larimer for deft Rucker, reserves opening statement. Witnesses for Govt. Trial is adj. until tomorrow. (Platt, J. V.J.)

10/24/77 Filed deft's affidavit & notice of motion to dismiss indictment - ret. 10/24/77. (filed & ret. in Roch.)

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs SMITH, Eugene

10

76 181 2
Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
10/25/77	Trial continues fr yesterday w/the same appearances. Witnesses for the govt. Trial adj. until tomorrow.				
10/26/77	Deft Smith is not present. The govt requests a warrant for his arrest. Counsel for deft requests a short adjournment. The Crt will issue a bench warrant for deft Smith. Deft Smith arrives for trial at 11:08 a.m. & is remanded to the custody of the Marshal for the remainder of the trial. Trial continues fr yesterday w/the same appearances. Witnesses for the govt. The govt rests. The jury is excused. Deft Rucker moves for a judgment of acquittal. Denied. Deft Smith moves for a judgment of acq. Denied. The jury returns. Witnesses for defts. Defts rest. Trial is adj. until tomorrow.				
10/27/77	Filed deft. Smith's request to charge. (filed & ret. in Roch.)				
10/27/77	Trial continues fr yesterday w/the same appearances. Rebuttal witnesses, for govt. The govt rests. Rebuttal witnesses for defts. The defts rest. The jury is excused. Defts renew motions for judgment of acq. Denied. The jury returns. Mr. Welch sums up for the govt. Mr. Larimer sums up for deft Rucker. Mr. Wolford sums up for deft Smith. Mr. Welch sums up in rebuttal for the govt. After listening to a charge by the Judge, the jury & the alternate jurors are taken to lunch at govt expense. The jury returns to begin deliberations. The jury returns for further instructions fr the Crt. Jury retires at 3:47 pm to continue deliberations. The jury returns at 6:00 pm & is questioned by the Crt as to the likelihood of reaching a verdict. The Foreman informs the Crt it will be several hrs before a verdict is reached. Jury retires. Jury returns at 6:23 pm for further instructions, fr the Crt & to hear portions of testimony. The Crt orders jury taken to dinner at govt expense. The jury returns to continue hearing portions of testimony. The jury retires to continue deliberations. Jury returns at 11:05 pm w/the following verdict:				
	Ct. 1 - Rucker - Guilty				
	Ct. 2 - " - "				
	Ct. 2 - Smith - "				
	Ct. 3 - Rucker - "				
	Ct. 4 - " - "				
	Ct. 4 - Smith - "				
	The jury is polled at direction of the Crt. Jury is excused. Crt directs that motions may be reserved until just before sentence. Govt moves for an order compelling defts pending sentence. Defts oppose. The Crt sets bond at \$10,000.00 surety for ea deft pending sentence. Sentence to be set after pretrial repts received in approx 20 weeks. Crt is adjourned at 11:30 pm.				
10/27/77	Filed Govt's request to charge. (filed & ret. in Roch.)				
11/21/77	Filed Deft's Notice of Appeal.				
11/21/77	Filed Financial Affidavit.				
11/21/77	Deft Smith moves for judgment of acquittal or a new trial. Denied.				

DATE
1977

PROCEEDINGS (continued)

V. EXCLUDABLE DEL

(Document No.)

11/21/77 (cont.) Probation Officer Gary E. King is sworn & testifies regarding probation report on Deft Smith. The Crt finds that the Youth Correction Act is not applicable in the case of deft Smith because of his record.

On motion of AUSA Houlihan, deft Smith is sentenced as follows: The Court: It is adjudged on Count Two of the indictment that the defendant is hereby committed to the custody of the A/G or his authorized representative for imprisonment for a term of six years & that deft shall become eligible for parole, under 18 U.S.C. 4205(b)(2) at such time as the Parole Commission may determine.

It is adjudged on Count Four of the indictment that the deft is hereby committed to the custody of the A/G or his authorized representative for imprisonment for a term of five yrs. & that deft shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the Parole Commission may determine. Such sentence under Ct. 4 to run concurrently w/the sentence imposed under Ct. 2 of the indictment. Deft Smith requests that bail be reduced pending appeal. Denied.

Appearances: Michael Wolford, Esq. for deft Smith.

AUSA Houlihan for govt.

PLATT, J., V.J.

CLOSED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

DANIEL LEE RUCKER and EUGENE
SMITH,

Defendants.

Cr. No. 76-181

:
:
: NOTICE OF MOTION FOR
DISCOVERY AND INSPECTION
: AND BILL OF PARTICULARS
ON BEHALF OF THE DEFENDANT
: DANIEL LEE RUCKER

PLEASE TAKE NOTICE, that upon the indictment, the annexed affidavit of David G. Larimer, Esq., attorney for the Defendant, Daniel Lee Rucker, and upon all the prior proceedings had herein, the Defendant, Rucker will move this Court at a regular motion term to be held on the 24th day of January, 1977 in the Federal Building, Rochester, New York, at 10:00 A.M. or as soon thereafter as counsel can be heard for Orders of Discovery and Inspection and a Bill of Particulars, pursuant to Rule 16 and 7 (f) of the Federal Rules of Criminal Procedure and for an Order requiring the government to turn over all evidence favorable to the Defendant and for such other and further relief as may be just and proper.

DATED: January 6, 1977
Rochester, New York

DAVID G. LARIMER, ESQ.
Attorney for Defendant, Daniel Lee Rucker
Office and Post Office Address
240 Reynolds Arcade Building
Rochester, New York 14614
Tel: (716) 546-6448

TO: GERALD J. HOULIHAN
Assistant United States Attorney
233 U. S. Courthouse
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

MOTION FOR DISCOVERY
AND INSPECTION

-VS-

DANIEL LEE RUCKER and EUGENE SMITH,

Defendants.

The Defendant, Daniel Lee Rucker, demands to inspect and/or copy and/or photograph each of the following, pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure:

1. All written or recorded statements made by either the Defendant, Eugene Smith or the Defendant, Daniel Lee Rucker, or any summaries, synopsis, notes, memoranda or resumes thereof, regardless whether such statements were reduced to writing or will be testified to by a witness for the prosecution or any stenographic, mechanical, electrical or other recording or transcription thereof which is a substantial verbatim recital of a statement made to an agent for the prosecution and recorded contemporaneously with the making of said oral statements and which are within the possession, custody or control of the prosecution, the existence of which is known or by the exercise of due diligence should become known to the attorney for the government.

2. The substance of any oral statement which the government intends to offer in evidence at the trial made by either the Defendant, Eugene Smith, or the Defendant, Daniel Lee Rucker, made before or after the indictment or arrest and in response to interrogation by any person then known to either Defendant to be a government agent.

3. All recorded testimony of either the Defendant, Eugene Smith or Daniel Lee Rucker, before the grand jury which relates to the offense charged.

4. The Defendant also requests that he be allowed to inspect and copy or photograph any and all reports of the results of any scientific tests or experiments made in connection with this case, including, but not limited to, handwriting and fingerprints which are in the possession custody or control of the prosecution, the existence of which is known or by the exercise of due diligence, should become known to the attorney for the government.

5. That in order to be able to submit an intelligent and factually based affidavit relative to any motions to suppress and exclude certain tangible property obtained by means of an unlawful search and seizure, the Defendant at this time moves the Court for an order directing the prosecution to deliver to the Defendant a list of all tangible property either seized from the Defendant, Rucker, or his co-Defendant or any named or un-named co-conspirators which will be offered in evidence against him at the trial of this indictment including the place where the item was seized, the time when the item was seized, the person or persons who seized the items; furthermore, the Defendant moves this Court for an order directing the prosecution to permit the Defendant to inspect and copy or photograph all such tangible property relating to the charge or charges contained in the subject indictment and which are in the possession of the prosecution, which items were (1) obtained from the Defendant, or (2) belonged to the Defendant or (3) were obtained from others by seizure or process.

6. A copy of the Defendant's prior criminal record, if any, which is in the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known by the attorney for the government.

7. A copy of the criminal record, if any, of Eddie Lee Brown and Roberto Louis Rivera, if any, which is in the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known by the attorney for the government. The Defendant, Daniel Lee Rucker, also makes this request under authority of Brady v. Maryland, 373 U. S. 83 and its progeny concerning evidence favorable to the accused.

8. All written or recorded statements made by co-conspirator, Eddie Lee Brown, and Roberto Louis Rivera, within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known by the attorney for the government.

9. All recorded testimony of the co-conspirators, Eddie Lee Brown and Roberto Louis Rivera, before a grand jury which heard testimony on the offense for which Daniel Lee Rucker is now indicted.

10. The substance of any oral statements the government intends to offer in evidence at the trial made by the co-conspirator, Eddie Lee Brown, or Roberto Louis Rivera, either before or after the indictment in response to interrogation by any person then known to the co-conspirators to be government agents.

11. The Defendant moves for an order requiring the prosecution to disclose on the record the following information: (a) The full nature and extent of all immunity granted to prosecution witnesses in this case, including the nature and details of all crimes for which such immunity was

granted; (b) Whether any consideration has been given or promised to the prosecution witnesses, and if so, the nature and details of such consideration given or promised; and further, if so, copies of all documents and records relating to the granting of such immunity as well as any other consideration given or promised; (c) With regard to any witness which the prosecution intends to call upon the trial of this indictment, it is also now requested that the Court compel the prosecution to disclose what, if any, consideration or prosecutory leniency was promised to said witness in exchange for his grand jury or trial testimony in connection with this indictment. See Giglio v. United States, 405 U. S. 150 and United States v. Pfingst, 477 F.2d, 177 (2d Cir. 1973).

12. The Defendant moves for an Order compelling the prosecution to advise the Defendant whether or not any electronic surveillance of the Defendant or his co-Defendant or any named, or un-named co-conspirator was conducted in connection with the investigation of this case, and if so, whether or not any ex parte eavesdropping order was procured and, if so, the direction by this Court that the prosecution turn over to the Defendant copies of all of said orders, as well as any affidavits and/or transcripts utilized in connection therewith.

13. The Defendant also moves at this time for an order directing the prosecution to make available to the Defendant, no later than seven (7) days prior to the date of trial, the grand jury minutes of those witnesses will be called upon by the prosecution to testify at the trial. This will avoid delay in the trial process, since the defense will need adequate time prior to commencing cross-examination to review this testimony.

14. The defense has not been informed by the government whether it intends to offer testimony identifying the Defendant, Daniel Lee Rucker

a person who committed the offenses charged to be given by a witness who previously identified the Defendant as such perpetrator. Without knowing any details of any identification procedure, it is totally impossible for the Defendant to prepare an affidavit seeking a hearing to determine the propriety of such prior identification. Therefore, the Defendant requests the Court order the government to disclose to the Defendant the time and location and individual to whom this prior identification, if any, was made. It is further requested that the Defendant's rights to a hearing with respect to this identification testimony be preserved until the Defendant has been given the necessary facts by means of this discovery Motion to file his Motions.

15. Pursuant to Rule 16, the Defendant moves this Court for an order compelling the prosecution to deliver to the defense names and addresses of all witnesses which the prosecution intends to call at the trial of this case. Defendant relies for authority on United States v. Baum, 482 F. 2d, 1325 (2d Cir. 1973) and United States v. Cannone, 18 Crim. Law Reporter, 2104 (2d Cir. Dec. 26, 1975).

16. Pursuant to Brady v. Maryland, 373 U. S. 83, the defense requests that the government turn over all material now known to the government or which may become known or which through due diligence may be learned from the investigating officers or the witnesses in the case which is exculpatory in nature or favorable to the accused or which may lead to exculpatory material. This request includes reports of any investigations carried out by the FBI or any other investigatory agency of suspects other than the Defendant, Daniel Lee Rucker. This request also includes names of witnesses to the alleged crime who did not identify the Defendant, Daniel Lee Rucker, as the perpetrator of it. It also includes the criminal record, if any, of any witnesses which the government intends to offer against the Defendant.

17. These requests are continuing and pursuant to Rule 16(c) of the Federal Rules of Criminal Procedure, the government is required to promptly notify the attorney for the Defendant, Daniel Lee Rucker, if it subsequently discovers any additional evidence or material previously requested or ordered.

DATED: January 6, 1977

DAVID G. LARIMER, ESQ.
Attorney for Defendant, Daniel Lee Rucker
Office and Post Office Address
240 Reynolds Arcade Building
Rochester, New York 14614
(716) 546-6448

TO: GERALD J. HOULIHAN
Assistant United States Attorney
233 U. S. Courthouse
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff, :

-VS-

DANIEL LEE RUCKER AND EUGENE
SMITH,

Defendants. :

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE)SS.:
CITY OF ROCHESTER)

DAVID G. LARIMER, being duly sworn, deposes and says:

1. That I am an attorney associated with the firm of Beckerman, Davidson, Cook & Fink, Rochester, New York and I am the attorney for the Defendant, Daniel Lee Rucker, having been appointed by this Court to represent him on December 8, 1976.

2. That the Defendant, Daniel Lee Rucker, has been indicted for violations of Title 18, United States Code, Sections 2113(a), 2 and Section 37

3. This affidavit is made in support of the Defendant, Rucker's pretrial Motion for discovery and inspection, pursuant to Rule 16 of the Federal Rules of Criminal Procedure and for a Bill of Particulars, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, as well as a Motion to compel the government to turn over all evidence favorable to the Defendant, Rucker.

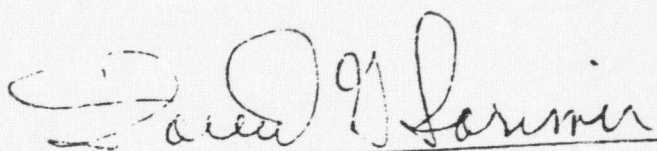
4. The Defendant, Daniel Lee Rucker, was indicted on or about December 2, 1976, for offenses which allegedly occurred on May 14, 1976 and September 29, 1976.

5. The Defendant was arraigned without counsel and a plea of not guilty was entered in his behalf.

6. After reviewing the indictment and after conferring with my client, in order to properly prepare for trial, it is essential that the information requested in the attached Motions be delivered. In order to prevent surprise and in order to adequately prepare for trial, it is important that the government set forth on the Bill of Particulars a more detailed statement concerning the serious crimes which the government has charged Mr. Rucker.

7. The indictment lacks particularity and fails to properly advise the Defendant of facts sufficient for him to prepare his defense. The request for information contained below are necessary so that the Defendant may be adequately apprised of the nature and scope of the charges against him and so that the Defendant may have an opportunity to adequately prepare his defense. The requested information is also essential so that prejudicial surprise may be avoided at the trial and so that the issues may be clarified and confusion and delay at the trial avoided. It is also essential that the defense be supplied with the above information so that the Defendant may be protected against a second prosecution for the same offense.

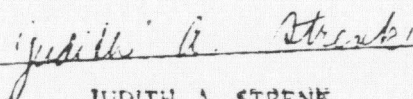
WHEREFORE, it is respectfully requested that the Motions for discovery and inspection and the Bill of Particulars be granted in all respects.



DAVID G. LARIMER

Sworn to before me this

7 day of January, 1977.



JUDITH A. STRENK
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 31, 1977

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

DANIEL LEE RUCKER and EUGENE SMITH,

Defendants.

DEMAND FOR BILL OF
PARTICULARS

Pursuant to Rule 7 (f) of the Federal Rules of Criminal Procedure, the Defendant, Daniel Lee Rucker, submits the following demand for Bill of Particulars:

I. AS TO ALL COUNTS IN THE INDICTMENT:

- (1) The exact place where the crimes were committed.
- (2) The exact times when each crime was committed.
- (3) State which Defendants are charged as principals and which are charged as aiders and abettors, and as to the latter, state how that Defendant is claimed to have aided and abetted the alleged offense or offenses.

AS TO COUNT 1

- (1) State the exact time of day on May 14, 1976 that the Defendant Daniel Lee Rucker, committed the alleged crime.

- (2) Identify the employees who were present as witnesses when Defendant allegedly committed the crime charged in Count 1.

- (3) State the amount of money that was allegedly taken by force and violence on May 14, 1976. State if any of the money was recovered, and so, from whom and the date of the recovery.

(4) State whether the Defendant, Daniel Lee Rucker, was actually present in the Marine Midland Bank on May 14, 1976.

(5) If the answer to the above number 4 is in the negative, specify where the Defendant, Rucker, is alleged to have been at the time the robbery took place.

(6) State the manner in which force and violence were allegedly used in committing the crime that is alleged to have occurred on May 14, 1976.

(7) Since the Defendant is charged with violation of Title 18, United States Code §2, state the manner in which Defendant, Rucker, aided abetted, counseled, commanded, induced or procured the commission of the crime alleged to have been committed on or about May 14, 1976.

(8) Specify whether or not any weapon was used in the commission of the offense charged on May 14, 1976.

AS TO COUNT 2

(1) State the exact time of day on May 14, 1976 that the Defendants committed the alleged crime.

(2) Identify the employees who were present as witnesses when the Defendants allegedly committed the crime charged in Count 2.

(3) State the amount of money that was taken by force and violence on May 14, 1976. State if any of the money was recovered, and if so, from whom and the date of recovery.

(4) State whether the Defendants were actually present in the Marine Midland Bank on May 14, 1976.

(5) If the answer to the above number 4 is in the negative, specify where the Defendants are alleged to have been at the time the robbery took place.

(6) State the manner in which force and violence were allegedly used in committing the crime that is alleged to have occurred on May 14, 1976.

(7) Since the Defendants are charged with violation of Title 18, United States Code §2, state the manner in which the Defendants aided, abetted, counseled, commanded, induced or procured the commission of the crime alleged to have been committed on or about May 14, 1976.

(8) Specify whether or not any weapon was used in the commission of the offense charged on May 14, 1976.

AS TO COUNT 3

(1) State the names and addresses of those other participants in the conspiracy whose names were unknown at the time of the filing of the indictment but have subsequently become known, and so state with respect to any participant whose name becomes known subsequent to the disposition of this Motion or prior to the end of the trial herein. State the approximate date upon which the Defendant, Daniel Lee Rucker, is alleged to have become a member of the conspiracy. State the name, present street address and street address at the time of the alleged participation in the conspiracy of all co-conspirators, including co-conspirators who were not known to the prosecution at the time the indictment was returned, but since has become known and so state with respect to any participant whose name becomes known subsequent to the disposition of this Motion but prior to the end of the trial herein.

(2) State the place, including street address, where the conspiracy was allegedly formed and the place or places where each Defendant and each co-conspirator joined the alleged conspiracy.

(3) State the circumstances under which and the words or conduct by means of which each Defendant and co-conspirator presently known to the government entered the alleged conspiracy.

(4) State which of the objects of the alleged conspiracy that the Defendant, Daniel Lee Rucker, is alleged to have conspired to achieve and what that Defendant, Daniel Lee Rucker, agreed to do in furtherance of the conspiracy and such objects thereof.

(5) State specifically the words and conduct of the Defendant, Daniel Lee Rucker, that the government claims constituted overt acts of that Defendant in furtherance of the alleged conspiracy.

(6) With respect to each Defendant and co-conspirator presently known to the government, set forth any additional overt acts committed in furtherance of the alleged conspiracy and which could have been but were not included in the indictment and concerning which the government intends to present evidence at trial and with respect to each such overt act state (a) which Defendant or co-conspirator committed the act; (b) which Defendant or co-conspirator was present at the time of the commission of such act; (c) what object of the conspiracy the act was committed in furtherance of and (d) the place, including street address and date including time when each such act was committed.

(7) State the last date upon which any act in furtherance of the conspiracy was performed by the Defendant, Daniel Lee Rucker. State the last date upon which any act in furtherance of the conspiracy was performed by any of the co-conspirators, whether named in the indictment or not and state further the nature of the acts and by whom they were performed.

(8) State the name and identity of all other persons present at the time of the alleged agreement by the Defendants and co-conspirators and at the time of any of the overt acts described in the indictment or any other overt acts upon which the government intends to offer proof at trial.

(9) State the name of any co-conspirator or Defendant who either personally or through counsel has cooperated or is cooperating with the prosecution in connection with this case and which the prosecution intends to call as a witness upon the trial of this matter. State whether any Defendant or co-conspirator has furnished information to law enforcement authorities with respect to the alleged conspiracy or any overt acts committed in furtherance thereof and if so, identify the Defendant or co-conspirator.

(10) With respect to overt act number 1, state the contents of conversation that occurred on May 12, 1976 between Daniel Lee Rucker and Roberto Louis Rivera, and state where that conversation took place.

(11) With respect to overt act number 2, state the exact time of day that Roberto Louis Rivera entered the Marine Midland Bank on May 12, 1976. Please state specifically where the prosecution contends that Defendant, Daniel Lee Rucker, was on May 12, 1976.

(12) With respect to overt act number 3, state the contents of conversation that occurred on May 14, 1976 between Daniel Lee Rucker and Roberto Louis Rivera, and state where that conversation took place.

(13) With respect to overt act number 4, specify the exact time of day that Roberto Louis Rivera entered the Marine Midland Bank on May 14, 1976, and state whether or not the Defendant, Daniel Lee Rucker, was present at the Marine Midland Bank on that day.

(14) With respect to overt act number 4, state where the Defendant Daniel Lee Rucker, was on May 14, 1976 at the time Roberto Louis Rivera entered the Marine Midland Bank, if the Defendant, Daniel Lee Rucker was not present at said Bank.

AS TO COUNT 4

(1) State the names and addresses of those other participants in the conspiracy whose names were unknown at the time of the filing of the

indictment but have subsequently become known, and so state with respect to any participant whose name becomes known subsequent to the disposition of this Motion or prior to the end of the trial herein. State the approximate date upon which the Defendant, Daniel Lee Rucker, is alleged to have become a member of the conspiracy. State the name, present street address and street address at the time of the alleged participation in the conspiracy of all co-conspirators, including co-conspirators who were not known to the prosecution at the time the indictment was returned, but since has become known and so state with respect to any participant whose name becomes known subsequent to the disposition of this Motion but prior to the end of the trial herein.

(2) State the place, including street address, where the conspiracy was allegedly formed and the place or places where each Defendant and each co-conspirator joined the alleged conspiracy.

(3) State the circumstances under which in the words or conduct by means of which each Defendant and co-conspirator presently known to the government entered the alleged conspiracy.

(4) State which of the objects of the alleged conspiracy that the Defendant, Daniel Lee Rucker, is alleged to have conspired to achieve and what that Defendant, Daniel Lee Rucker, agreed to do in furtherance of the conspiracy and such objects thereof.

(5) State specifically the words and conduct of the Defendant, Daniel Lee Rucker, that the government claims constituted overt acts of that Defendant in furtherance of the alleged conspiracy.

(6) With respect to each Defendant and co-conspirator presently known to the government, set forth any additional overt acts committed in furtherance of the alleged conspiracy and which could have been but were not included in the indictment and concerning which the government intends to

present evidence at trial and with respect to each such overt act state
 (a) which Defendant or co-conspirator committed the act; (b) which Defendant
 or co-conspirator was present at the time of the commission of such act;
 (c) what object of the conspiracy the act was committed in furtherance of and
 (d) the place, including street address and date, including time, when
 each such act was committed.

(7) State the last date upon which any act in furtherance of the
 conspiracy was performed by the Defendant, Daniel Lee Rucker. State the last
 date upon which any act in furtherance of the conspiracy was performed by any
 of the co-conspirators, whether named in the indictment or not and state further
 the nature of the acts and by whom they were performed.

(8) State the name and identity of all other persons present
 at the time of the alleged agreement by the Defendants and co-conspirators and
 the time of any of the overt acts described in the indictment or any other
 overt acts upon which the government intends to offer proof at trial.

(9) State the name of any co-conspirator or Defendant who either
 personally or through counsel has cooperated or is cooperating with the
 prosecution in connection with this case and which the prosecution intends
 call as a witness upon the trial of this matter. State whether any Defendant
 or co-conspirator has furnished information to law enforcement authorities
 with respect to the alleged conspiracy or any overt acts committed in furtherance
 thereof and if so, identify the Defendant or co-conspirator.

(10) With respect to overt act number 1, state the contents
 of the conversation that occurred on September 29, 1976 between Daniel Lee
 Rucker, Eugene C. Smith and Eddie Lee Brown.

(11) As to overt act number 2, state the exact time that
 Eddie Lee Brown did enter the First National Bank, Georgetown Plaza branch

on September 29, 1976 and state the whereabouts of the Defendants, Daniel Lee Rucker and Eugene C. Smith at the time Eddie Lee Brown did enter the First National Bank.

(12) If the Defendants, Daniel Lee Rucker and Eugene C. Smith were not present at the First National Bank on September 29, 1976 when Eddie Lee Brown did enter that Bank, state specifically where the government contends that Daniel Lee Rucker and Eugene C. Smith were located at that time.

(13) With respect to overt act number 3, state the contents of the conversation that occurred in the Gold Circle Store between Daniel Lee Rucker and Eugene C. Smith and Eddie Lee Brown on September 29, 1976.

(14) With respect to the conversations that occurred on September 29, 1976 between Daniel Lee Rucker, Eugene C. Smith and Eddie Lee Brown, state whether any other individual was present during those conversations.

DATED: Rochester, New York
January 6, 1977

DAVID G. LARIMER, ESQ.
Attorney for Defendant, Daniel Lee Rucker
Office and Post Office Address
240 Reynolds Arcade Building
Rochester, New York 14614
(716) 546-6448

TO: GERALD J. HOULIHAN
Assistant United States Attorney
233 U. S. Courthouse
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

DANIEL LEE RUCKER and EUGENE SMITH,

Defendants.

Cr. No. 8-181

NOTICE OF MOTION
FOR DISCOVERY AND
INSPECTION AND
BILL OF
PARTICULARS ON
BEHALF OF DEFENDANT
EUGENE SMITH

PLEASE TAKE NOTICE upon the indictment, the annexed affidavit of Michael R. Wolford, Esq., attorney for the defendant Eugene Smith, and upon all the prior proceedings had herein, the defendant will move this Court at a regular motion term to be held on the 10th day of January, 1977 in the Federal Building, Rochester, New York, at 10:00 A.M. or as soon thereafter as counsel can be heard for Orders of Discovery and Inspection and a Bill of Particulars pursuant to Rule 16 and 7(f) of the Federal Rules of Criminal Procedure and for such other and further relief as may be just and proper.

Dated: December 29, 1976
Rochester, New York

MICHAEL R. WOLFORD, ESQ.
Attorney for Defendant Eugene Smith
Lincoln First Tower
Rochester, New York 14603
(716) 546-8000

TO: GERALD J. HOULIHAN
Assistant United States Attorney
233 U. S. Courthouse
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

DANIEL LEE RUCKER and EUGENE SMITH,

Defendants.

:
:
: AFFIDAVIT
:
:
:

STATE OF NEW YORK:
COUNTY OF MONROE: SS.
CITY OF ROCHESTER:

MICHAEL R. WOLFORD, being duly sworn, deposes and
says:

1. I am an attorney associated with the firm of
Nixon, Hargrave, Devans & Doyle, Rochester, New York, and duly
admitted to practice before the Courts in the State of New York and
in the U. S. District Court for the Western District of New York.
I am the attorney for the defendant Eugene Smith, having been ap-
pointed by the Court to represent him on December 10, 1976.

2. I am making this affidavit in support of the
defendant's pretrial motions for discovery and inspection pursuant
to Rule 16 of the Federal Rules of Criminal Procedure and for a
bill of particulars pursuant to Rule 7(f) of the Federal Rules of
Criminal Procedure.

3. The defendant was indicted by the Federal Grand
Jury of the Western District of New York on December 2, 1976 and

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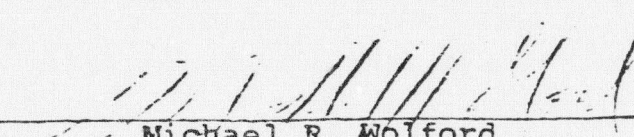
charged with one count of bank robbery in violation of Title 18, United States Code, §2113(a) and §2 and also one count of conspiracy to commit bank robbery in violation of Title 18, United States Code, §371. The offenses are alleged to have occurred on September 29, 1976. The defendant was arraigned without counsel on December 6, 1976, and entered a plea of not guilty.

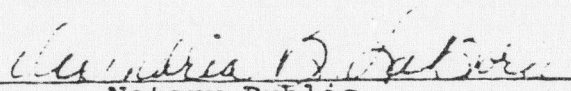
4. Based upon a review of the indictment, it is apparent that the defendant Eugene Smith is not alleged to have entered the bank to commit bank robbery. Rather, he is charged with conspiracy with his co-defendant Daniel Lee Rucker and a non-indicted co-conspirator by the name of Eddie Lee Brown who allegedly entered the First National Bank in the Georgetown Plaza Office on September 29, 1976.

5. In view of the nature of the case and the fact that the accomplice to the crime will purportedly be the chief government witness, it is essential that the information requested be supplied in order to properly prepare for the trial of this matter.

WHEREFORE, it is respectfully requested that the motions for discovery and inspection and the bill of particulars be granted in all respects.

Sworn to before me this
29th day of December, 1976.


Michael R. Wolford


Notary Public
ALEXANDRIA B. LaBORIE
Notary Public in the State of New York
MONTGOMERY COUNTY, N. Y.
Commission Expires March 20, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

DANIEL LEE RUCKER and EUGENE SMITH,

Defendants.

:

: DISCOVERY AND: INSPECTION

:

:

:

The defendant Eugene Smith demands to inspect and/or copy and/or photograph each of the following pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure:

1. All written or recorded statements made by either the defendant Eugene Smith or Daniel Lee Rucker or copies thereof within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the government.

2. The substance of any oral statement which the government intends to offer in evidence at the trial made by either the defendant Eugene Smith or Daniel Lee Rucker whether before or after the indictment or arrest and in response to interrogation by any person then known to either defendant to be a government agent.

3. All recorded testimony of either the defendant Eugene Smith or Daniel Lee Rucker before a grand jury which relates to the offense charged.

4. Copies of the defendants' prior criminal record(s) if any, which is in the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence, may become known by the attorney for the government.

5. A copy of Eddie Lee Brown's prior criminal record, if any, which is in the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence, may become known by the attorney for the government.

6. All written or recorded statements made by the co-conspirator Eddie Lee Brown within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known by the attorney for the government.

7. All recorded testimony of the co-conspirator Eddie Lee Brown before a grand jury which related to the offense charged.

8. The substance of any oral statement that the government intends to offer in evidence at the trial made by the co-conspirator Eddie Lee Brown whether before or after the indictment and in response to interrogation by any person then known to the co-conspirator to be a government agent.

9. All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions

thereof, which are within the possession, custody or control of the government and which the government intends to use as evidence-in-chief at the trial.

10. All items enumerated in paragraph 5 of this demand which were obtained from either defendant.

11. All results or reports of physical or mental examinations and scientific tests, or copies thereof, which are in the possession, custody, or control of the government, and which the government intends to use as evidence-in-chief at the time of trial.

12. All material now known to the government or which may become known or which through due diligence, may be learned from the investigating officers or the witnesses in the case which is exculpatory in nature or favorable to the accused or which may lead to exculpatory material. ~~This request includes reports of any investigations carried out by the FBI or any other investigatory agency of suspects other than the defendant Eugene Smith.~~ This request would also include the names and addresses of witnesses to the alleged crime who did not identify the defendant Eugene Smith as the perpetrator of it.)

13. The full nature and extent of all immunity granted to the prosecution's principal witness in this case, Eddie Lee Brown, including the nature and detail of all crimes to which such immunity was granted.

14. Whether any other special consideration has been given or promised to such witness by the government; and if so,

the nature and details of such consideration given or promised.

These requests are continuing and pursuant to Rule 16(c) of the Federal Rules of Criminal Procedure, the government is required to promptly notify the attorney for the defendant Eugene Smith if it subsequently discovers any additional evidence or material previously requested or ordered.

Dated: December 29, 1976

MICHAEL R. WOLFORD, ESQ.
Attorney for Defendant Eugene Smith
Lincoln First Tower
Rochester, New York 14603
(716) 546-8000

TO: GERALD J. HOULIHAN
Asssitant United States Attorney
233 U. S. Courthouse
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

DANIEL LEE RUCKER and EUGENE SMITH,

Defendants.

:

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:

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BILL OF

PARTICULARS

Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, the defendant Eugene Smith submits the following demand for a bill of particulars:

Count 2

1. State the exact time of day on September 29, 1976 the defendant Eugene Smith committed the alleged crime.
2. State the address of the First National Bank, Georgetown Plaza Branch where the alleged crime occurred.
3. Identify the individual or individuals who were in possession of the money that was allegedly taken by force and violence on September 29, 1976.
4. State the amount of money that was allegedly taken by force and violence on September 29, 1976.
5. State whether any of the money was recovered, and if so, from whom and the date of the recovery.
6. State whether either the defendant Eugene Smith or Daniel Lee Rucker were actually present in the Bank on

September 29, 1976 when the crime allegedly occurred.

7. If the answer to number 6 is in the negative, specify where the defendants were located.

8. State the manner in which force and violence were allegedly used in committing the crime that is alleged to have occurred on September 29, 1976.

9. Specify the manner in which the defendant aided, abetted, counseled, commanded, induced or procured the commission of the crime that is alleged to have occurred on September 29, 1976 in violation of §2, United States Code, Title 18.

Count 4

1. State the place, including street address, where the conspiracy was initially formed, and the place or places, including street addresses, where each defendant and each co-conspirator presently known to the government joined the alleged conspiracy.

2. State the date or dates and the time or times, when each defendant and each co-conspirator presently known to the government joined or entered into the alleged conspiracy.

3. State the period or periods of time during which each defendant and each co-conspirator presently known to the government remained in the alleged conspiracy.

4. State the circumstances under which, and the words or conduct by means of which, each defendant and co-conspirator presently known to the government entered into the alleged conspiracy.

- 3 -

5. State which of the objects of the alleged conspiracy that the defendant Eugene Smith is alleged to have conspired to achieve, and what that defendant Eugene Smith agreed to do in furtherance of the conspiracy and such objects thereof.

6. State specifically the words and conduct of the defendant Eugene Smith that the government claims constituted overt acts of that defendant in furtherance of the alleged conspiracy.

7. With respect to each defendant and co-conspirator presently known to the government, set forth any additional overt acts committed in furtherance of the alleged conspiracy and which could have been but were not included in the indictment and concerning which the government intends to present evidence at the trial, and with respect to each such overt act state:

(a) Which defendant or co-conspirator committed the act;

(b) Which defendant or co-conspriator were present at the time of the commission of each such act;

(c) What object of the conspiracy the act was committed in furtherance of;

(d) The place, including street address, and date, including time, when each such act was committed.

- 4 -

8. State the names and addresses of all co-conspirators whose names are presently known to the government, but are not named in the indictment.

9. With respect to any co-conspirators whose identity is presently unknown, but whose identity hereafter becomes known to the government, state the names and addresses of such co-conspirators as they become known.

10. State the names and addresses of all other persons who in any way participated in the alleged conspiracy, or in any of the overt acts committed in furtherance thereof, and all other persons present at the time or times any of the defendants or co-conspirators joined or entered the alleged conspiracy or committed any of the overt acts in furtherance thereof.

11. State whether any defendant or co-conspirator presently known to the government was acting on behalf of the United States Government or any State agency at any time during the period of the alleged conspiracy.

12. State whether any defendant or co-conspirator has furnished information to law enforcement authorities with respect to the alleged conspiracy or any overt acts committed in furtherance thereof, and if so, identify the defendant or co-conspirator.

13. With respect to overt act number 1, state the contents of the conversation that occurred on September 29, 1975.

14. With respect to overt act number 3, state the contents of the conversation that occurred in the Gold Circle

Store, and also what other conduct occurred at that time.

Dated: December 29, 1976
Rochester, New York

MICHAEL R. WOLFORD, ESQ.
Attorney for Defendant Eugene Smith
Lincoln First Tower
Rochester, New York 14603
(716) 546-8000

TO: GERALD J. HOULIHAN
Assistant United States Attorney
233 U. S. Courthouse
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

DANIEL LEE RUCKER and
EUGENE SMITH,

Defendant

CR. NO. 76-181

GOVERNMENT'S RESPONSE
DEFENDANTS' MOTIONS

The Government jointly responds to the defendants' motions in the referenced matter as follows:

The Government agrees to provide the following information:

1. Attached is the interview of the defendant EUGENE SMITH, at the time of his arrest, consisting of 2 pages.
2. Attached is a copy of the interview of DANIEL LEE RUCKER at the time of his arrest.
3. The Government does not have in its possession an interview of EUGENE SMITH or DANIEL LEE RUCKER that was given to an Agent for the Government, other than those as set forth above.
4. EUGENE SMITH and DANIEL LEE RUCKER did not appear before the U.S. Grand Jury.
5. I have attached the criminal record of EUGENE SMITH and DANIEL LEE RUCKER.
6. The Government agrees to provide a criminal record of Eddie Lee Brown and Roberto Louis Rivera and will provide that to the defendants prior to the beginning of trial.

-2-

7. The Government declines to provide any and all written or recorded statements made by co-conspirators Eddie Lee Brown and Roberto Louis Rivera at this time. However, the Government is aware of its obligation under Title 18, United States Code, Section 3500, and agrees to provide all written and recorded statements made by co-conspirators subsequent to their testimony at the trial in this case.

8. The Government does not have any physical or mental examinations or scientific tests which were performed in connection with this case.

9. The Government is aware of its duty and its continuing duty under the doctrine of Brady v. Maryland. In this regard, the Government has examined its file and does not find any exculpatory information considered to be within the Doctrine of Brady v. Maryland. In this regard, the Government specifically declines to provide any information of F.B.I. investigations of suspects other than DANIEL LEE RUCKER or EUGENE SMITH. In addition, the Government declines to provide the names of witnesses who did not identify the defendant EUGENE SMITH or the defendant DANIEL LEE RUCKER. In this regard, the Government does not claim that either of these defendants entered the bank in question, therefore, no eyewitnesses are claimed to have identified them as people who went into the bank.

In conclusion, the Government is aware of its obligations under Brady v. Maryland and will continue to review all information that comes to the attention of this office and see if any exculpatory information is available.

10. The Government has agreed not to prosecute Eddie Lee Brown or Roberto Louis Rivera in connection with their participation in any of the federal crimes, which are the subject of this indictment. There has been no formal grant of immunity on the Federal level in connection with these crimes.

11. Other than as stated above, there is no other immunity or special consideration given on the federal level. The Government is aware that there may or may not be a special consideration given on the state rule with regard to these witnesses if they agree to testify for the Federal Government in this case. The Government will specifically request information regarding this and provide it to defense counsel as soon as it is received.

12. With regard to the robbery of Marine Midland Bank which took place on May 12, 1976 and May 14, 1976, the Government states as follows:

The Marine Midland Bank on each of these occasions was located at 1500 Hudson Avenue at the Hudson Ridge Plaza, and in each case, no money was taken from the bank.

13. With regard to the robbery of the First National Bank on September 29, 1976, the Government states that the bank robbery occurred at approximately 1:10 p.m. and that an audit of the bank's finances shows that approximately \$1,063 was taken during the bank robbery. The bank is located at Georgetown Plaza, 1000 Ridge Road East, the Irondequoit branch of First National Bank. In connection with all other requests of the defendants for a Bill of Particulars, the Government declines to provide any information on the basis that it is not a proper item for discovery under the Federal Rules of Criminal Procedure. Each of the counts of the indictment set

forth the acts charged with sufficient specificity to allow the defendant to form a reasonable defense and to protect him against double jeopardy. In addition, all other items requested are evidentiary in nature and not subject for discovery under Rule 7.

14. The Government declines to provide the names of any and all witnesses in connection with this case.

15. The Government declines to provide any and all grand jury minutes in connection with this case as they are not proper items for discovery. However, the Government will agree to provide the grand jury minutes of all witnesses who take the stand and testify in the criminal trial, pursuant to Title 18, United States Code, Section 3500.

16. The Government advises the defendants that witnesses Eddie Lee Brown and Roberto Louis Rivera were shown spreads of photographs and thereafter did identify the defendants. As such, should the defendants desire a Wade hearing, they are now put on notice that such photograph identification was made.

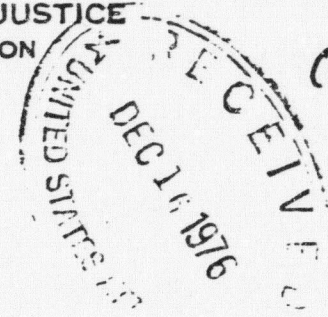
17. The Government declines to provide any other information requested in defendants' motion papers.

Dated: February 17, 1977

Yours, etc.

RICHARD J. ARCARA
United States Attorney

By: GERALD J. HOULIHAN
Assistant United States Attorney

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATIONCR76-181
GSH.

Copy to:

(1) - USA, Buffalo (Rochester)

Report of:

THOMAS E. CARNEY
12/8/76

Office:

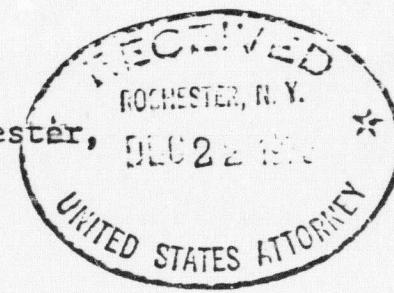
Buffalo, New York

Field Office File #:

91-8033

Bureau File #:

Title:

EDWARD LEE BROWN;
DANIEL LEE RUCKER;
EUGENE CARLTON SMITH,
First National Bank of Rochester,
1000 East Ridge Road
Irondequoit, New York
September 29, 1976~~XXXXXX~~~~XXXXXX~~

Character:

BANK ROBBERY

Synopsis:

Subjects SMITH and RUCKER indicted by Federal Grand Jury, Rochester, New York, 12/2/76, for violation of Title 18, Sections 2113(a), 2, 371, USC, charging them with Bank Robbery and Conspiracy. Bench warrant issued by USDJ HAROLD P. BURKE same date. SMITH and RUCKER arrested by BuAgents on 12/6/76 and appeared before USDJ HAROLD P. BURKE on 12/6/76 and a plea of not guilty was entered. \$10,000.00 bond set. ARMED AND DANGEROUS.

- P -

Details:

On December 2, 1976, Assistant United States Attorney GERALD J. HOULIHAN, Western District of New York, Rochester, New York, advised SMITH and RUCKER were indicted by a Federal Grand Jury for violation of Title 18, Sections 2113(a), 2 and 371, United States Code, Bank Robbery and Conspiracy, for robbery of captioned bank.

FEDERAL BUREAU OF INVESTIGATION

-1-

Date of transcription 12/8/76

On December 6, 1976, a bench warrant issued by United States District Court Judge HAROLD P. BURKE on December 2, 1976, was executed at 235 Seneca Manor Drive, wherein Special Agents of the Federal Bureau of Investigation (FBI), after identifying themselves to residents of the above address located EUGENE CARLTON SMITH in a second floor bedroom and arrested SMITH.

SMITH was transported to the Rochester Office of the FBI, where he was advised of his constitutional rights and executed an "Interrogation; Advice of Rights" form and stated that he did not desire an attorney but he provided the following descriptive information:

Name	EUGENE CARLTON SMITH
Sex	Male
Race	Negro
Date of birth	January 13, 1956
Place of birth	Rochester, New York
Social Security Account Number	119-48-6231
Address	235 Seneca Manor Drive Rochester, New York
Scars and/or Tattoos	None
Employment	Unemployed and never employed
Education	1974 Monroe High School, 11th Grade
Mother	Mrs. AUDREY SMITH (separated) 235 Seneca Manor Drive Rochester, New York
Father	WILLIS SMITH (Address unknown)
Height	5' 7"
Weight	134 pounds
Eyes	Brown
Hair	Black
Complexion	Medium
Marital status	Single, never married
Military	None

Interviewed on 12/6/76 at Rochester, New York File # Buffalo 91-8033

by SAs THOMAS E. CARNEY, DENNIS R. CARNEY,
HAROLD D. THOMAS and DAVID EDWARD SWANSON/TEC:dkb Date dictated 12/8/76

BU 91-8033

-2-

Relatives
Brothers
Sisters
Prior arrests

Five
Two
Burglary 1975, two year
probation, others

FEDERAL BUREAU OF INVESTIGATION

-1-

Date of transcription 12/8/76

52

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DANIEL LEE RUCKER was arrested at his residence, 241 Seneca Manor Drive. He was advised of the Agents' identities, the charges against him and his rights. He refused to sign the Waiver Form but acknowledged he understood them.

The following description was obtained through observation and interview:

Name	DANIEL LEE RUCKER
Also known as	Danny
Race	Negro
Sex	Male
Date of birth	August 23, 1957 at Arkansas
Height	6' 1"
Weight	151 pounds
Build	Slender
Hair	Black, "Corn-rows"
Eyes	Brown
Address	241 Seneca Manor Drive (resides with mother, SALLY RUCKER)
Federal Bureau of Investigation Number	887422N7
Social Security Account Number	099-50-7481
Employment	Unemployed
Arrest record	Extensive; on probation for Grand Larceny
Automobile	1972 Gold Cadillac DeVille (front end damage), New York State License Number 596 XWN (registered to IRA LEON ADAMS, September 21, 1952, 152 Seneca Manor Drive)
Friends	BEVERLY LEWIS, August 7, 1960 488 Flint Street CAROL CUNNINGHAM 25 Juliant Street EUGENE SMITH 235 Seneca Manor Drive

Interviewed on 12/6/76 at Rochester, New York File # Buffalo 91-7972

SAs JOHN KSZYSTYNIAK, JR., DAVID EDWARD SWANSON,
by CLINTON R. VAN ZANT and SAA CHARLES R. STEVENS/JK;dkb 12/7/76

BU 91-7972

-2-

Brothers

DOYLE RUCKER
29 1/2 Thomas Street
June 17, 1955
CHARLES RUCKER
241 Seneca Manor Drive
July 16, 1956
MICHAEL RUCKER
241 Seneca Manor Drive

BU 91-8033

On December 6, 1976, Assistant United States Attorney GERALD J. HOULIHAN, Rochester, New York, advised SMITH and RUCKER appeared before United States District Court Judge HAROLD P. BURKE this date and entered a plea of not guilty. Bond set at \$10,000.00.

On December 6, 1976, ROY FRELISI, Rochester Police Department, furnished SMITH's and RUCKER's Federal Bureau of Investigation and local police department records as follows:

IDENTIFICATION DIVISION
Rochester, N. Y.

33
Criminal Record of Eugene Smith
S.S. No. 119 48 6231
Opr. Lic. No. _____

Our No. 54490F.B.I. No. 2 562-State Bur. No. 345662

DATE OF ARREST	CHARGE	OFFICER	DISPOSITION
26-72 I&NYSIIB	Assault 3rd 120.00-1 AM Warr Richard Sundberg, 67 Wilmington on 6-16-72	Palermo Cimino	Judge Patlow 6-27-72 BW BW issued 7-7-72 Return Judge Patlow 10-16-72 Judge Galloway 5-31-73 Dismissed by Atty-Gen BW returned 123 on 7-10-
7-72	BW issued on above charge		
5-73 5659 DMO-SFRC	1. Robbery 2nd 160.10-1 CF Took money from Jeffrey Miller of 1580 Parma Hilton Rd and threatened him with bodily harm if he resisted, on 4-5-73.	Prince Frey	10-26-73 No Bill of Indictment
"	2. Grand Larceny 3rd 155.30-5 EF See Above.	"	10-26-73 No Bill of Indictment
18-73 705545 1 DMO	Robbery 2nd/C-150 S. Fly. Ave. snatched a purse on 6-12-73 in front of 2 Weld St. from a Mrs. Christine Gattellaro/65 Kennedy Cir. and took \$100.00	Dets. Caceci DePalma Hall & Walsh	8-17-73 No Bill of Indictment
	Grand Larceny	"	8-17-73 No Bill of Indictment
16-75 1300920 IDMO	Burglary 3rd/140.20 PL Defendant did Break Into 1307 Hudson av And Remove a Quantity Of Coins Valued At More Than \$250.00	Penna Hall Brighton Koerner	Indicted 4-16-75 Judge Celli 1-13-76 Pled Guilty to charges b in full satisfaction of these charges
"	Grand Larceny 3rd/155.30-1 PL	"	See Above
9/10/75 76404	Burglary 3rd 140.20PL 85 Collingwood Dr 8/27/75	Fornataro Schafer Penna Fantanza	Indicted 11-6-75 Judge Celli 1-13-76 Pled Guilty 5 Yrs. Probation

53
UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D. C. 20537

10-3-75. 851 MO

T.H

54490

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 Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. WHERE
 DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS DESIRED
 COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Rochester NY	Eugene Carlton Smith 54490 SID 345 6662 Y	6-18-73	rob 2nd GL 3rd	No Bill of Indictment on either chg
SO Rochester NY	Eugene Carlton Smith 56735 SID 3456662Y	9-9-73	Petit Larc	
PD Rochester NY	Eugene Carlton Smith 54490 SID 3456662Y	4-16-75	1.burg 3rd 2299 2.GL 3rd 2308 (coins from house)	
PD Rochester NY	Eugene Carlton Smith 54490 SID 3456662 Y	9-10-75	burglary 3rd 2202 (2 cts) (homes) gr larc 3rd 2308 (2 cts)	

ERFST

[illegible]

55
IDENTIFICATION DIVISION
Rochester, N. Y.

DEPARTMENT OF POLICE

Danny Lee Rucker

Our No. 57629

F.B.I. No. 837 + 22 117

State Bur. No. 387 0723M

Aminal Record of
ommunications
sent to

SS# 09950-7481

Date of Arrest	Charge	Officer	Disposition
4-75 8336 DMO	1. Burglary 2nd 140.25-2 CF Broke into 401 Seneca Manor Dr. took safe and amplifier from office(Roch Housing Inc.)	Byrd, Davis Pehisse	
"	2. Grand Larc.3rd 155.30-1 EF see above.	"	
6-3-75	Warr. iss. Crm. Tresp. & P.L. (on or about 3-4-75) (the above charge) Compt: D.A. CITY COURT		Served 6-13-75
13-75 831	Crim Tres (Warrant) Ply Av S (C)DA City Court(3-4-75)	Hryniw- Cimino	Judge Scacchetti 11/6/75 Dism/Not Def Atty Failure to Prosecute
"	Petit Larceny " " "	"	Judge Scacchetti 11/5/75 Dism/Not Def Atty Failure to Prosecute
15/76 9038 19126	Robbery 1st 160.15 2 PL 1500 Hudson Ave/Marine Midland \$2375.00	Giardina Colosimo Sexstone Delahany Penisee	Indicted 2-20-76 7/6/76 Judge Mars Pled guilty to Gran Lar 3rd Mon Co Jail 60 days/Prob 4yrs
15/76	Grand Larceny 3rd 155.35PL	Caceci " "	Ind. Pled guilty to full satisfaction as above
27p76 5680	Menacing 120.15PL-130 Sply Av (C)Anthony Smith 30 Vienna St (1-10-76)	Cimino	Judge Curran 10/7/76 Dism/Not Def Atty Failure to Prosecute
-11-76 3864 DMO	CPCS 7th/NYSPL 220.03/Def was in auto Johns where a quantity of marijuana was DeWolf thrown from. Arrested w/Ira Adams RPD#55371		

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537
887 422 N7

11/09/76

PAGE 1

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DISPOSITION DATA IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS DESIRED,
COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR: IDENTIFIER (ORI) NAME CASE NUMBER (OCA)	SUBJECT: NAME STATE NUMBER (SID)	ARRESTED OR RECEIVED	C - CHARGE D - DISPOSITION
NATIONAL CRIME INFORMATION CENTER FGPT.		CLASS.	14 09 08 11 05 09 13 08 09
NY0270100 PD ROCHESTER, NY 57629	RUCKER, DANNY NY3830723M	03/04/75	C-BURGLARY 2ND 2203 C-GR LARC 3RD 2308-PROP FROM BUSINESS
NY0270100 PD ROCHESTER, NY 57629	RUCKER, DANNY LEE NY3830723M	06/13/75	C-WRT-CRIM TRESPASS 3RD 5707 D-CHARGE DISMISSED-11/06/75 FAILURE TO PROSECUTE C-PETIT LARC 2308 WARRANTS D-CHARGE DISMISSED-11/06/75 FAILURE TO PROSECUTE
NY0270100 PD ROCHESTER, NY 57629	RUCKER, DANNY NY3830723M	01/15/76	C-ROBBERY 1ST 1201 C-BANK ROBBERY-PISTOL C-GRAND LARCENY 3RD 2311 D-CONVICTED-07/06/76 CONFINEMENT-60C PROBATION-4Y10M MONROE COUNTY JAIL
NY0270000 SO ROCHESTER, NY 70405	RUCKER, DANIEL LEE NY3830723M	07/06/76	C-GRAND LARCENY 3RD D-CONVICTED- CONFINEMENT-60C
NY0270100 PD ROCHESTER, NY 57629	RUCKER, DANNY NY3830723M	10/11/76	C-CRM POSS CONT SUBS 7TH 35 MARIJUANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES,

Plaintiff

- vs -

CR: 76-181

DANIEL LEE RUCKER and EUGENE SMITH,

Defendants

Gerald J. Houlihan
Assistant United States Attorney
for the government

Michael R. Wolford
Lincoln First Tower
Rochester, N.Y. 14603
Attorney for defendant Smith

David G. Larimer
240 Reynolds Arcade Building
Rochester, N.Y. 14614
Attorney for defendant Rucker

By notice of motion filed December 30, 1976 with the supporting affidavit of Michael R. Wolford sworn to December 29, 1976 the defendant Smith moves for discovery and inspection and a bill of particulars. The government filed its response on February 22, 1977. By Memorandum of Law dated March 3, 1977 filed by Michael R. Wolford, the dispute as to items of discovery and inspection has been narrowed to requests numbered 6, 7 and 8 of defendant's motion for discovery and inspection, which relate to the statements made by the unindicted co-conspirator Eddie Lee

- 2 -

Brown, and to exculpatory material requested in paragraph 12, which would include reports of investigatory agencies of subjects other than the defendant Eugene Smith, including the names and addresses of witnesses to the alleged crime who did not identify the defendant Eugene Smith as the perpetrator of it.

On or before July 15, 1977 the government shall furnish to the attorney for the defendant Smith all written and recorded statements made by Eddie Lee Brown within the possession, custody or control of the government, all recorded testimony of Eddie Lee Brown before a grand jury which related to the offense charged, the substance of any oral statement that the government intends to offer in evidence at the trial, made by Eddie Lee Brown, whether before or after indictment and in response to interrogation by any person then known to Eddie Lee Brown to be a government agent, the names and addresses of witnesses to the alleged crime who did not identify the defendant Eugene Smith as the perpetrator of it. (The robbery took place within the bank. It is not claimed by the government that the defendant Smith entered the bank).

On or before July 15, 1977 the government shall inform the attorney for the defendant Smith whether any of the money was recovered and if so from whom and the date of recovery, whether either the defendant Eugene Smith or Daniel Lee Rucker

- 3 -

were actually present in the bank on September 29, 1976 when the crime allegedly occurred, the manner in which force and violence were allegedly used in committing the crime that is alleged to have occurred on September 29, 1976.

In all other respects the motion of the defendant Smith for discovery and inspection and for a bill of particulars is denied.

By notice of motion for discovery and inspection and a bill of particulars filed January 3, 1977 the defendant Rucker moves for certain relief. The government filed its response on February 22, 1977.

On or before July 15, 1977 the government shall furnish to the attorney for the defendant Rucker all written and recorded statements made by Eddie Lee Brown within the possession, custody or control of the government, all recorded testimony of Eddie Lee Brown before a grand jury which related to the offense charged, the substance of any oral statement that the government intends to offer in evidence at the trial, made by Eddie Lee Brown, whether before or after indictment and in response to interrogation by any person then known to Eddie Lee Brown to be a government agent, the names and addresses of witnesses to the alleged crime who did not identify the defendant Rucker as the perpetrator of it. (The robbery took place within the bank. It is not claimed by the government that the defendant Rucker entered the bank).

- 4 -

On or before July 15, 1977 the government shall inform the attorney for the defendant Rucker whether any of the money was recovered and if so from whom and the date of recovery, whether either the defendant Rucker or Smith were actually present in the bank on September 29, 1976 when the crime allegedly occurred, the manner in which force and violence were allegedly used in committing the crime that is alleged to have occurred on September 29, 1976, on or before July 15, 1977 the government shall furnish to the attorney for the defendant Rucker, copies of any statements of witnesses, exhibits and evidence, in the possession of the government, which would exculpate, tend to exculpate, or in any way provide mitigating factors in connection with the said defendant's alleged commission of the offenses charged in the indictment.

In all other respects the motion of the defendant Rucker is denied.

ALL OF THE ABOVE IS SO ORDERED.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

June 23, 1977.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

Cr. No. 76-181

vs.

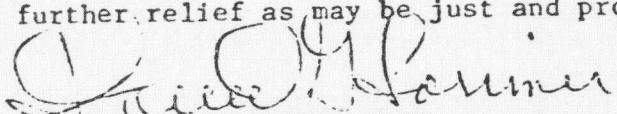
NOTICE OF MOTION FOR
DISMISSAL

DANIEL LEE RUCKER and EUGENE SMITH,

Defendants.

PLEASE TAKE NOTICE that upon the indictment, the annexed Affidavit of David G. Larimer, Esq., attorney for the Defendant, Daniel Lee Rucker, and upon all the prior proceedings had herein, the Defendant, Rucker, will move this Court at a regular motion term to be held on the 24th day of October, 1977 in the U.S. Courthouse, 100 State Street, Rochester, New York at 10:00 A.M. or as soon thereafter as counsel can be heard for an Order dismissing the indictment on the grounds that the Speedy Trial Act, 18 U.S.C. §3161 and the Rules for Prompt Disposition for Criminal Cases in the Western District of New York have been violated and for such other and further relief as may be just and proper.

DATED: October 18, 1977
Rochester, New York


DAVID G. LARIMER, ESQ.

Attorney for Defendant, Daniel Lee
Rucker

240 Reynolds Arcade Building
Rochester, New York 14614

TO: GERALD J. HOULIHAN
Assistant United States Attorney
233 U. S. Courthouse
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

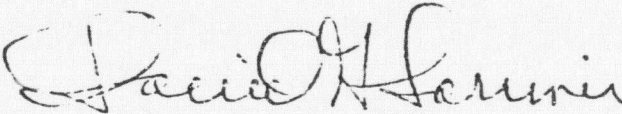
MOTION TO DISMISS

DANIEL LEE RUCKER and EUGENE
SMITH,

Defendants.

The Defendant, Daniel Lee Rucker, by his attorney, David G. Larimer, Esq., hereby moves this Court to dismiss the instant indictment against Daniel Lee Rucker on the grounds that both the provisions of the Speedy Trial Act, 18 U.S.C. §3161 and the Rules for Prompt Disposition of Criminal Cases in the Western District of New York have been violated in that more than one hundred and eighty (180) days have elapsed since the indictment was filed in this case and the Defendant has not yet been brought to Trial. There has been a clear violation of both the Speedy Trial Act and the Western District Rules and therefore this indictment must be dismissed. None of the exceptions which allow the Government to try the Defendant subsequent to 180 days apply here and therefore this indictment should be dismissed with prejudice.

DATED: October 18, 1977
Rochester, New York


DAVID G. LARIMER, ESQ.
Attorney for Daniel Lee Rucker
240 Reynolds Arcade Building
Rochester, New York 14614

TO: GERALD J. HOULIHAN
Assistant United States Attorney
233 U. S. Courthouse
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL LEE RUCKER and EUGENE
SMITH

Defendants.

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

DAVID G. LARIMER, being duly sworn, deposes and says:

1. That I am an attorney duly admitted to practice in the U. S. District Court for the Western District of New York and I was appointed on or about December 9, 1976 pursuant to the Criminal Justice Act to represent the Defendant, Daniel Lee Rucker, concerning the charges brought against him in Indictment No. 76-181.

2. That upon information and belief the indictment against Daniel Lee Rucker and a co-defendant, Eugene Smith, was filed on December 2, 1976 in the Western District of New York. That that indictment charges the Defendant, Daniel Lee Rucker, with two counts of entering a bank with intent to commit a felony in violation of 18 U. S. C. §2113 (a) and with two counts of conspiracy in violation of 18 U. S. C. §371.

3. That in a Notice of Motion dated January 6, 1977 your deponent moved on behalf of the Defendant, Daniel Lee Rucker, for discovery and inspection and a Bill of Particulars returnable January 24, 1977.

4. That on or about January 14, 1977 the Honorable Harold P. Burke reduced the Defendant, Daniel Lee Rucker's, bail to \$500 cash or surety bond and a surety bond was posted on or about that day releasing the Defendant from Federal custody, although he remained in custody on a State detainer.

5. That the hearing on the Defendant's Motion for Discovery and Inspection was adjourned at the request of the Government to February 14, 1977 with that period of delay being specifically charged to the Government.

6. That on February 14, 1977 your deponent appeared in U. S. District Court before the Honorable Harold P. Burke to argue the Defendant's Motion for Discovery and for a Bill of Particulars. At that time the Government had not yet filed a response to the Defendant's Motion for Discovery and Inspection but the Government was ordered to file a response by February 16, 1977 and the Defendant was to have one week within which to file any response if necessary.

7. That in a letter dated February 18, 1977 the Government attached its response to the Defendant's Motion for Discovery and Inspection and a Bill of Particulars.

8. That in an Order dated June 23, 1977 the Honorable Harold P. Burke granted the Defendant's Motion for Discovery and Inspection and a Bill of Particulars in part and denied the Defendant's Motion in part. The Government was specifically ordered to turn over certain materials to the Defendant on or before July 15, 1977.

9. That on or about June 28, 1977 your deponent received a Notice of Motion and Motion to Set Date for Trial to be heard on July 11, 1977 which

was filed by the Government and directed to your deponent and Michael R. Wolfor Esq., attorney for the co-defendant, Eugene Smith.

10. That your deponent appeared in Court on July 11, 1977 when the Government moved this case for Trial and your deponent answered that the Defendant was ready for Trial assuming that your deponent on behalf of the Defendant received the discovery material which had been previously ordered by the Court to be delivered by July 15, 1977. At that time your deponent inquired if the Court would set a specific trial date and the Court declined.

11. In a letter dated July 15, 1977 the Assistant United States Attorney on behalf of the Government wrote to your deponent and stated that he would allow your deponent to review the complete FBI investigative report and the Grand Jury minutes of each witness in connection with this case.

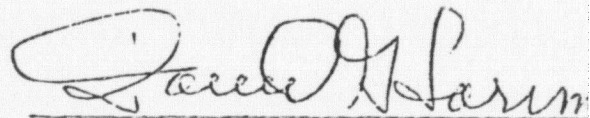
12. That on or about August 25, 1977 your deponent reviewed the investigative reports of the FBI in connection with this case at the office of the United States Attorney. In a letter dated September 7, 1977 your deponent requested copies of certain FBI investigative reports, scientific reports and Grand Jury testimony.

13. That on or about September 19, 1977 your deponent received a Notice of Motion and Motion to Set Date for Trial returnable September 26, 1977. That on September 26, 1977 your deponent was present in United States District Court before the Honorable Harold P. Burke and the Court set November 22, 1977 for Trial in this matter. Your deponent did advise the Court that you

deponent would be unavailable for Trial from November 1, 1977 to November 2, 1977.

14. That this indictment pursuant to the Speedy Trial Act, 18 U.S.C. §3161 et seq. and the Rules for Prompt Disposition of Criminal Cases the Western District of New York should be dismissed since the Defendant was not tried as required by those Acts and Plans within 180 days of the filing of this indictment. That the period of delays were not caused or occasioned by the Defendant but were caused and occasioned by the Government and by the Court.

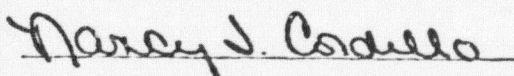
15. That based on the facts and circumstances surrounding the filing of the instant indictment and the setting of a Trial date for the Defendant that this indictment should in all respects be dismissed with prejudice.



DAVID G. LARIMER

Sworn to before me this

18 day of October, 1977.



NANCY J. CORDELLO
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

EUGENE C. SMITH and DANIEL LEE RUCKER,

Defendants.

REQUEST TO

CHARGE

CR. NO. 76-181

The defendant Eugene C. Smith for his request to charge respectfully submits the following:

1. It is your duty to give separate, personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants. Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct, and any other evidence in the case which may be applicable to him.

In the present case, the defendant Eugene C. Smith is only charged with respect to the alleged bank robbery that occurred on September 29, 1976 at the First National Bank, Georgetown Plaza Branch. This alleged bank robbery is the subject of Count 2 and Count 4 of the indictment. The

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testimony that has been presented with respect to the alleged bank robbery at the Marine Midland Bank, 1500 Hudson Avenue, on May 14, 1976 is not to be considered with respect to the defendant Eugene C. Smith.

2. The law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

the burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never

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shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

So if the jury, after careful and impartial consideration of all the evidence in the case, has a reasonable doubt that a defendant is guilty of the charge, it must acquit. If the jury views the evidence in the case as reasonably permitting either of two conclusions -- one of innocence, the other of guilt -- the jury should of course adopt the conclusion of innocence.

Unless the government proves beyond reasonable doubt that the defendant has committed every element of the offense with which he is charged, you must find him not guilty.

3. The defendant Eugene C. Smith is not alleged to have entered the First National Bank in connection with the alleged robbery that occurred on September 29, 1976, but rather he is charged with having aided and abetted in the commission of that alleged robbery.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and will fully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

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An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You of course may not find any defendant guilty unless you find beyond reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond reasonable doubt that the defendant was a participant and not merely a knowing spectator.

4. The witness Edward Lee Brown testified in this case having been promised that he would not be prosecuted federally for any of the charges for which he testified. In other words, he was granted immunity from prosecution by the government.

One who testifies under a grant of immunity with a promise from the government that he will not be prosecuted is a competent witness. His testimony may be received in evidence and considered by the jury even though not corroborated or supported by other evidence.

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Such testimony, however, should be examined by you with greater care than the testimony of an ordinary witness. You should consider whether the testimony may be colored in such a way as to further the witness's own interest, for a witness who realizes that he may procure his own freedom by incriminating another has a motive to falsify. After such consideration, you may give the testimony of the immunized witness such weight as you feel it deserves.

5. The witness Edward Lee Brown is considered an accomplice.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of one who asserts by his testimony that he is an accomplice, may be received in evidence and considered by the jury, even though not corroborated by other evidence, and given such weight as the jury feels it should have. The jury, however, should keep in mind that such testimony is always to be received with caution and considered with great care.

6. The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach

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the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

7. The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment.

It is proper for you, ladies and gentlemen of the jury, to decide whether Edward Lee Brown, an admitted participant in the bank robbery of the First National Bank, is telling the truth regarding his involvement or is perjuring himself in the hope of obtaining some further concession

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from the government. (United States v. Gonzalez - Carta,
419 F 2d 548 (2d Cir 1969)).

Dated: October 25, 1977

Respectfully submitted,

MICHAEL R. WOLFORD, ESQ.
Attorney for defendant
Eugene C. Smith
Lincoln First Tower
Rochester, New York 14603
(716) 546-8000

The People of the State of New York
THE GRACE OF GOD FREE AND INDEPENDENT

To all to whom these presents shall come or may concern, Greeting:

KNOW that we, having examined the Records and files in the office of the Clerk of the County of Monroe, of the County Court of said County, and of the Supreme Court of Said State in and for said County, do find there remaining on file or entered a certain

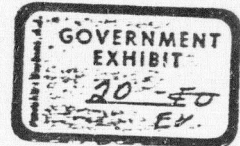
Indictment and Conviction

in an action wherein

The People of the State of New York plaintiff,

and DANIEL LED RUCKER defendants,

and the words and figures following, to wit:



Monroe County Court.

Liber 48

Present, Hon. Hyman J. Maas Index No. 2049/76 Page No. 244
County Judge, Monroe County.

THE PEOPLE

INDICTMENT No. 189Filed Feb 20 1976Daniel Lee Rucker

THE DEFENDANT having been indicted for the crime of Robbery First Degree, sect.
70.00 + 160.15 sub. 2. and Grand Larceny Second Degree sect 24.00 + 155.35
Committed on the 15th day of January 1976 in the _____ of _____ County of Monroe

arraigned upon the indictment on the 27th day of February 1976 counsel, C. Steinman P.D.

On the 27th day of February 1976 pleads that he is not guilty
if the two counts contained in Ind. No. 189

whereupon the Court appoints the _____ day of _____ 19____ for trial

On the 3rd day of May 1976 defendant changed plea to guilty to the crime of Grand
Larceny third degree & Felony sec 155.30 in full satisfaction
if the two counts contained in Ind. No. 189

the Court appoints the 6 day of July 1976 for pronouncing judgment.

And on said last mentioned day the defendant appeared for judgment and was asked by the clerk whether
he had any legal cause to show why judgment should not be pronounced against h ; and no sufficient cause
appearing why judgment should not be pronounced.

On May 3, 1976 the District Attorney orally in open court
recommended that the defendant be permitted to plead
guilty to the crime of Grand Larceny third degree, Etal.
in the interest of justice.

(Sentence) Probation four years or ten months

It is Ordered and Adjudged by the Court that the said Daniel Lee Rucker
for the crime of Grand Larceny third degree, Etal.
said, whereof he has been convicted, be imprisoned in the Monroe County Jail
a term of sixty (60) days and Probation for
years and ten months

he being sentenced this 6 day of July 1976

The above named defendant was examined by the Court before judgment was pronounced and he stated
that he was born at Forest City, Ark. resides at 241 S. Main St. No. age 18 years;
married or single; parents _____; occupation _____; education;
religious instruction; habits _____ before convicted.
Social Security No. _____

STATE OF NEW YORK
COUNTY COURT

COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

-VS-

CHARLES EDWARD RUCKER, DANIEL LEE
RUCKER and DOYLE LEE RUCKER

FIRST COUNT:

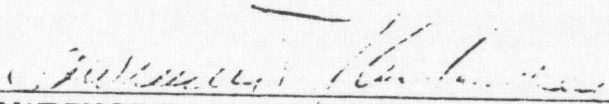
THE GRAND JURY OF THE COUNTY OF MONROE, by this indictment, accuse the defendants, CHARLES EDWARD RUCKER, DANIEL LEE RUCKER and DOYLE LEE RUCKER, of the crime of Robbery in the First Degree, in violation of Sections 20.00 and 160.15, subdivision 2 of the Penal Law of the State of New York, committed as follows:

The defendants, on or about January 15, 1976, in the County of Monroe, State of New York, forcibly stole property, to wit, a sum of United States currency, from Nora Cameron, and when, in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime was armed with a deadly weapon, to wit, a .38 caliber, two inch barrell, pistol, serial number #29J591.

SECOND COUNT:

AND THE GRAND JURY OF THE COUNTY OF MONROE, further accuse the defendants, CHARLES EDWARD RUCKER, DANIEL LEE RUCKER and DOYLE LEE RUCKER, of the crime of Grand Larceny in the Second Degree, in violation of Sections 20.00 and 155.35 of the Penal Law of the State of New York, committed as follows:

The defendants, on or about January 15, 1976, in the County of Monroe, State of New York, stole property, to wit, a sum of United States currency and when the value of said property exceeded one thousand five hundred dollars (\$1,500.00).



LAWRENCE T. KURLANDER
DISTRICT ATTORNEY OF MONROE COUNTY

ROCHESTER POLICE DEPARTMENT
Public Safety Building
150 S. Plymouth Ave.
Rochester, N. Y.

Dated: Jan. 15, 1976

Time: 5:50PM

My name is Daniel Rucker and I have been advised that I have the right to remain silent and that I do not have to answer any questions if I do not wish to. I have the right to consult with a lawyer before answering any questions and to have him here with me during the questioning, if I so desire. If I cannot afford a lawyer, than one will be provided for me. If I do consent and agree to discuss this matter without a lawyer present, I can stop talking at any time.

I do understand the above Constitutional Rights and I agree to give up the above rights and I do consent to discuss this matter with you.

On Jan. 15, 1976, at about 9:20AM, my brother Charles came over to my house at 175 Remington St. and asked me if he could take Ulysees car so that he could pick up my cousin Doyle. Charles took the car and returned about 1 hr. later with Doyle Rucker. Charles, Doyle and myself went into my bedroom and were listening to some records, when my brother Charles said lets go see what we can get into. Doyle then asked me if I had a piece meaning a gun, and I told him yes, and that it was in the closet. Doyle then went and got the gun. It was a short black pistol and was loaded, and the gun belonged to my uncle John who is now down south. He then left the house and got into Ulysees car which is a 1972 Cadillac, color Gold. I drove the car, Doyle was in the front passenger side, and my brother Charles was in the back seat. We drove around and then drove down Hudson Ave. and saw the Marine Midland Bank. My cousin Doyle said, lets check the bank out. I then drove behind a tire store and parked next to the restaurant. Doyle and my brother got out of the car, and I stayed and waited for them. I was waiting for them to come back because they were only going to check it out to see if it was possible to rob the bank. A few minutes later Doyle and my brother Charles came running back and got into the car. My cousin Doyle kept telling me to drive, meaning to leave there. They never told me that they robbed the bank, but I figured that they did because they came running from the bank and told me to drive. I then drove back to my house at 175 Remington St. and all three of us went into the house. I took my sweater off and locked the door and then went into my bedroom and saw Doyle and Charles counting the money on my bed. My brother Charles and Doyle were cutting the money into one hundred dollar piles on the bed. I took a couple piles and folded it with the money that was mine, then put a rubber band around it and put the money in my pants pocket. I took about \$200.00 dollars of the bank money and the rest was mine. I then went out to empty the garbage on Ketchum St. and saw a Police man looking at Ulysees car. I asked him what was the matter, and he asked if I knew whose car this was. More police came and I was placed under arrest and taken to the Detective Bureau. The Det. Bu. Det. Casper searched me and found the money.

Witness:

I have read this statement and had it read to me, it is true and accurate, and no promises have been made to me by the police. I have been treated good by the police.

Det. Anthony Cerveth

BEST COPY AVAILABLE

1 Statement taken on September 29, 1976,
2 in the office of Senior Investigator
3 Frank Dovidio, Irondequoit Town Hall.
4

5 RE: Robbery occurring at First National
6 Bank, Georgetown Plaza, September 29, 1976.
7

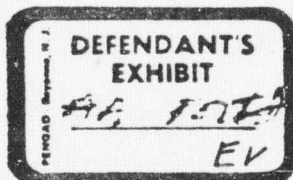
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9
10 PRESENT: FRANK DOVIDIO,
11 SENIOR INVESTIGATOR FOR THE IRONDEQUOIT
POLICE DEPARTMENT

12 DAVID GROSSI,
13 INVESTIGATOR

14 RONALD CANTABENE,
INVESTIGATOR

15 EDWARD LEE BROWN,
16 WITNESS
17

18
19
20 REPORTED BY: DEBORAH VIGNARE,
GRAND JURY STENOGRAPHER
21



1 Statement taken on September 29, 1976,
2 in the office of Senior Investigator
3 Frank Dovidio, Irondequoit Town Hall.

4 TIME: 5:20 P.M.

5 PRESENT: FRANK DOVIDIO,
6 SENIOR INVESTIGATOR FOR THE
IRONDEQUOIT POLICE DEPARTMENT

7 DAVID GROSSI,
8 INVESTIGATOR

9 RONALD CANTABENE,
10 INVESTIGATOR

11 EDWARD LEE BROWN,
12 WITNESS

13 REPORTED BY: DEBORAH VIGNARE,
14 GRAND JURY STENOGRAPHER

15 EDWARD LEE BROWN , called herein as a
16 witness, was examined and testified as follows:

17 EXAMINATION BY INVESTIGATOR GROSSI:

18 Q. I am Investigator Grossi, this is Sergeant Frank Dovidio,
19 you are Edward Lee Brown?

20 A. Right.

21 Q. Your date of birth is July 15, 1956, correct?

22 A. Right.

23 Q. You live at 134 Seneca Manor Drive?

1 A. Yes, I do.

2 Q. You realize you are under arrest for robbery first and
3 grand larceny. You have been advised of your rights
4 prior to giving this statement?

5 A. Yes, I have.

6 Q. Relate what happened at 1:15 p.m. this afternoon, the
7 29th of September at First National Bank in Georgetown?

8 A. Well, what happened when I went in there?

9 Q. Yes, in your own words what exactly happened?

10 A. I parked the bike in the side of the bank and I went in.
11 Before I went in I, you know, checked the ---, to make
12 sure that I had my paper and stuff in my pocket then I
13 went in and waited about ten minutes because there was
14 a car in the back where you, you know, where you can
15 drive in and get money and stuff, there was a car back
16 there and there was a little boy at one counter and the
17 other two counters were closed.

18 Q. I am going to stop for a minute and ask you to state
19 what this paper was in your pocket.

20 A. It was a note saying, you know, you know, saying it is
21 a hold up you have to give me all your big bills, that is
22 what the paper said.

23 EXAMINATION BY INV. DOVIDIO:

1 Q. Who wrote on that paper Edward?

2 A. I did.

3 Q. You wrote that note. Okay, when did you write that note?

4 A. I wrote it this morning.

5 Q. This morning?

6 A. It wasn't really this morning, it was like, you know,
7 about ten, eleven o'clock, around there.

8 Q. Where did you do it?

9 A. I did it upstairs.

10 Q. Upstairs where?

11 A. In my bedroom.

12 EXAMINATION BY INV. GROSSI:

13 Q. Go ahead.

14 A. And you know, I stood there about ten minutes because
15 the lady was waiting on that little boy and finally she
16 didn't get through with him and I was going to turn
17 away and go then I seen a lady she had pushed a button
18 'cause she went up under the counter and did like that,
19 you know, (indicating), pressed on it and then I said,
20 too late now, so I just passed ---, I went to the note and
21 passed the note to the lady because I was off the counter,
22 you know, I wasn't on it, like five steps back, then I
23 went up and when I seen she had pressed the button then

1 I just gave the lady the note, I said too late now, I
2 gave her the note and she opened it slow and passed it
3 to this other lady and she looked at it and I told her
4 don't try nothing.

5 Q. You said, don't try nothing?

6 A. Don't try nothing.

7 EXAMINATION BY INV. DOVIDIO:

8 Q. What did you do at that point?

9 A. I took my hand and put it up on the counter.

10 Q. Was it in your pocket?

11 A. My coat pocket. I put it up there and said, don't try
12 nothing.

13 Q. What were you simulating when you did that?

14 A. I was simulating like I had a gun.

15 EXAMINATION BY INV. GROSSI:

16 Q. Go ahead, finish.

17 A. Then, you know, she was taking the money, you know, and
18 she was putting it up on the counter, like one stack,
19 two stacks, three stacks and I just took it and put it
20 in my right coat pocket, you know, then I got on my
21 bike and went to Gold Circle.

22 Q. You got on your bike, you rode your bike to Gold Circle?

23 A. Yes.

EXAMINATION BY INV. CANTABENE:

1
2 Q. When you went back to the bank you put your hand in your
3 pocket simulating you had a gun?

4 A. Right.

5 Q. Which hand was that?

6 A. Left hand.

7 Q. When you grabbed the money off the counter you put it ---?

8 A. I put it, I grabbed the money, I had my left hand in
9 my pocket like I had it up on the counter and I took
10 my right hand and scooped up the money and put it in
11 my right coat pocket.

EXAMINATION BY INV. GROSSI:

12
13 Q. Pick up where you arrived at the Gold Circle, what

14 A. happened?

15 A. I took the bike and put it, there was carts, they had
16 a row of carts, I put it by there. I went in the store
17 running around like I was crazy for about five minutes
18 and I thought I have to go to the bathroom and count
19 the money up, I thought that was where I better go.

20 Q. So, did you have a conversation with anybody while you
21 were inside the store?

22 A. Just before, after or just at all?

23 Q. From the time you arrived at Gold Circle until you were

1 apprehended, did you have a conversation with anybody?

2 A. Yes, with two peoples.

3 Q. Okay, who were those people?

4 A. One was a black guy and the other one was a white guy.

5 Q. Identify the black and white guy.

6 A. Black guy, he's about five nine, weighed about 165
7 pounds, short fro.

8 Q. What was the other guy?

9 A. Other dude, white guy, six feet tall, weighed 150 pounds.

10 Q. What were the circumstances around the conversation?

11 A. Well, I talked to the black, first person I talked to was
12 a white guy when I was in the bathroom and, you know, I
13 asked him did he have a dime because I wanted to make a
14 phone call and all he had was a nickel. I said, that's
15 all right, then I went out, then I asked the black person
16 two things, for a dime, first asked him for a light, then
17 I asked him did he have a dime. He didn't have a dime
18 but he had a light. Then it's goofed up, you know.

19 Q. Go ahead.

20 A. Because, because what happened after that was after I
21 got the light from the black guy. I had went, you know,
22 back to the bathroom, you know, I had went in and I had
23 to make sure, make sure there was nobody sitting in the

1 toilet stool. I looked down at the bottom to see if
2 there were feet so I went to the end stool and I went
3 and sat down, you know, and then I then, I took my pants
4 down, you know, and I had to make it look good, you know,
5 somebody came in and seen I didn't have my pants down
6 they would want to know what I was doing with my pants
7 up. I had to make it look for real. I had ---, I sat
8 down and had a cigarette, I was shaking, trembling,
9 because I knew I wasn't out of the woods yet because
10 I was in Golden Circles and I don't know why I went in
11 Golden Circles. Anyway, then I took the money out, you
12 know, and started counting it. It came to three hundred
13 and fifty-five, sixty dollars something like that. Then
14 I put that in my pocket, right pants pocket and then I
15 was sitting there thinking about, I was saying, like wow
16 you know, I did it, you know, something like that, you
17 know. Then I started thinking about, you know, I was
18 counting up money, you know, like to give to my brother,
19 this is going ---, I was counting up, having a cigarette
20 and I was nervous and I couldn't do two things and I
21 went to put the cigarett out, I put it out and flushed
22 the toilet. I was shaking and I ---, it fell, it was
23 like I was paranoid or something, I was looking at it,

1 the water, it come up and I thought it was stuck down
2 there, I put my hand down there and water started
3 loosening up and it was gone, then I sat down.

4 Q. How much money would you say actually went down the
5 toilet?

6 A. I don't know, I wasn't finished counting it.

7 EXAMINATION BY INV. CANTABENE:

8 Q. How far had you counted when you dropped it?

9 A. About eighty dollars, ninety dollars, because I had
10 counted that two, three times, I was shaking.

11 Q. Was there a considerable amount left that you had not
12 counted?

13 A. It was all money I had that I had got from the bank.

14 Q. Was it a large stack that you hadn't counted?

15 A. Right.

16 EXAMINATION BY INV. GROSSI:

17 Q. Go ahead from there.

18 A. Then I sat on the stool for about five, ten minutes
19 thinking about why this happened to me, you know, then
20 I just got up and said, well ---, then I went out to
21 buy me some clothes and that is when I got caught.
22 Well, let me make sure, well, I did talk to a couple of
23 people about where the pants was at but I talked to one

1 guy but he didn't work in the store, I asked him where
2 the men's pants department was at, I think I passed
3 three, four times, I was walking around that place like
4 a chicken with his head cut off, that is probably why,
5 you know, I got the sweats and I was looking for some
6 pants when I was in the pants section, you know, that is
7 when the guy came and told me to hold it, you know.

8 Q. Okay, at that point the police officer, officer
9 identified himself as a police officer to you?

10 A. Let me ---, I can't, you know, because he was scaring
11 me, you know, and I believe I was scaring him. You see
12 I believe he thought I had a gun and he didn't want to
13 walk up to me, you know, and he want ---, didn't want
14 to show me identification, he had his hand, his pocket,
15 he had it on his, it, you know, calling for somebody.
16 He told me to hold it right here.

17 Q. Was it at that point you were placed under arrest, right?

18 A. Yes.

19 INVESTIGATOR GROSSI: Okay, anymore?

20 EXAMINATION BY INV. DOVIDIO:

21 Q. This morning before you went to the bank, when did you
22 decide you were going to hold the bank up?

23 A. When I was getting high.

1 Q. When you what?

2 A. When I was getting high.

3 Q. Getting high, describe that?

4 A. I was smoking refer.

5 Q. Marijuana?

6 A. Right.

7 Q. How much marijuana did you smoke this morning?

8 A. About six, six, about six joints.

9 Q. What did you have, a dime bag?

10 A. No, yesterday it was a nickel bag I bought it in a
11 nickel bag.

12 Q. I see, where did you buy it?

13 A. (No response)

14 Q. Where did you buy it?

15 A. I bought it from this dude.

16 Q. Downtown?

17 A. No, I didn't buy it downtown, I had bought it over his
18 house.

19 Q. I see, that of course is the way you say you got high,
20 you smoked it this morning?

21 A. I smoked the rest of it this morning.

22 Q. How much did you smoke yesterday?

23 A. Well, I wasn't by myself, you know, yesterday, I had

1 went over some girl's house, you know, last night, I
2 went to some girl's house about I think it was about
3 7:30, eight o'clock, I am not sure but it was somewhere
4 around there 'cause right after my mother and father
5 had went to church a friend of mine came over, he gave
6 us a ride over this girl's house.

7 EXAMINATION BY INV. CANTABENE:

8 Q. How many cigarettes did you smoke out of that nickel
9 bag last night, how many joints did you make up?

10 A. Well about thirteen, fourteen.

11 Q. Thirteen or fourteen then you rolled another six for
12 today so you got twenty joints out of a nickel bag?

13 A. Around there, somewhere around there, I might be wrong
14 because I wasn't rolling it by myself.

15 Q. Just to clarify as far as the statement goes, by a
16 nickel bag you are referring to five dollars worth of
17 marijuana?

18 A. Right.

19 EXAMINATION BY INV. DOVIDIO:

20 Q. Then you decided this morning when you started smoking
21 marijuana you were going to hold up the bank, is that
22 it?

23 A. I don't know, I can't speak for anybody else, I was

1 thinking about it, I said.

2 Q. What did you need the money for?

3 A. Well, see I did, I ---, I don't work, I get unemployment
4 checks but I give my mother and father forty dollars out
5 of seventy-seven dollars I get, you know, and stuff,
6 plus, you know, after that I be buying milk and taking
7 my brothers to movies and I buy out of that, gas and
8 electric got to be paid and stuff and stuff like that
9 and some money, you know, plus, you know, I like to get
10 high too, you know, so about Monday or Tuesday, you
11 know, I be broke so I will just get high and I was
12 thinking about that.

13 Q. Did you have any outstanding debts that had to be paid
14 any demands for money made on you?

15 A. Yes, but this is, you know, a long time ago.

16 Q. Did you pay that debt?

17 A. I had paid part of it, you know, then they stopped
18 calling, I guess they said forget it, they stopped
19 calling and stuff like this.

20 Q. How much did you owe?

21 A. Two-sixty, two-seventy, somewhere around there I think.
22 I got a doctor bill down at Genesee Hospital for about
23 two hundred dollars, I got beat up by this gang when I

1 was twelve, two, three hundred dollars something like
2 this unless my father paid for it, I don't know.

3 Q. Is there any other reasons why you might have wanted or
4 might have needed money?

5 A. I ---, I didn't need money that bad to go steal from
6 somebody, it was just something stupid you be doing at
7 the time you be smoking refer, something that you be
8 thinking would be funny and stuff, you know, stuff like
9 that, that's all.

10 Q. You feel marijuana was the cause of your ---

11 A. I think if I had never thought about it I would never
12 did it.

13 Q. You think if you weren't smoking marijuana you never would
14 have done it?

15 A. This is the first time I did something like this, I never
16 did nothing stupid like this before.

17 EXAMINATION BY INV. CANTABENE:

18 Q. Did you ever think of something like this when you were
19 high before?

20 A. Yes, but I never did it.

21 Q. Is that the only time you think of those things when
22 you are high?

23 A. I ---, you think of that stuff when you be sober.

1 Q. So you can think of the same thing whether you are
2 sober or high?

3 A. Yes.

4 Q. One other thing Ed, from the time that you were placed
5 into custody had you ever at anytime been threatened by
6 the police?

7 A. By the police?

8 Q. Yes, since we arrested you today?

9 A. No, I am not threatened by the police.

10 Q. Have you been beat up by the police?

11 A. No.

12 EXAMINATION BY INV. GROSSI:

13 Q. One other thing Edward, two more questions here, was
14 there anybody else involved in this bank robbery with
15 you?

16 A. No, there wasn't.

17 Q. And prior to being taken into custody by the police
18 department and arrested for the charge you were advised
19 of your Constitutional Rights and you understood them
20 fully, is that correct?

21 A. Right.

22 Q. Okay, is there anything you wish to add at this time?

23 A. I don't know.

1 INV. GROSSI:

Okay. This statement is being

2 completed at the Irondequoit Police

3 Department, September 29, 1976.

4
5 TIME:

6 5:45 P.M.

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JLM

EDWARD LEE BROWN

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)

-vs-)

DANIEL L. RUCKER,)
EUGENE C. SMITH,)Defendants.)
-----)

Transcript of testimony of EDWARD LEE BROWN, taken in
the proceedings held in the above-entitled matter before the
United States Grand Jury at the United States Courthouse,
100 State Street, Rochester, New York, on November 18, 1976,
commencing at 10:00 A.M.

APPEARANCES:

RICHARD J. ARCARA, ESQ.
United States Attorney
(By Gerald J. Houlihan, Esq.)
Assistant United States Attorney
United States Courthouse
Rochester, New York 14614

Janice Lee Marozzi
Court Reporter
1139 Alliance Building
183 East Main Street
Rochester, New York

I N D E XThursday, November 18, 1976Edward Lee Brown

Examination by Mr. Houlihan

Page

2

(An oath was administered by the Foreman of the Grand Jury to the Court Reporter, to report truthfully and accurately the proceedings on hearing before the Grand Jury, and the same keep secret; and she was thereupon duly sworn.)

E D W A R D L. B R O W N,
after being duly called and sworn, was examined
and testified as follows:

EXAMINATION

BY MR. HOULIHAN:

Q Mr. Brown, this Grand Jury is investigating a conspiracy to rob and the robbery of the First National Bank in Rochester on Ridge Road near Gold Circle. As I advised you before and advised your attorney, it is not our intention to charge you personally with the crime. We do want your testimony to assist us in prosecuting other people involved on the federal level. As such I represent to you now that you will not be charged federally with any crime arising out of your testimony before this Grand Jury, however, if you should testify falsely before this Grand Jury you may be prosecuted

for perjury. Do you understand what I said?

A Yes, I do.

Q You consulted with your attorney prior to testifying and you are aware you may have your attorney present outside the room if at any time you want to talk to him, and I assume he explained that to you?

A Yes, he did.

Q And you voluntarily appear to testify?

A Yes.

Q Mr. Brown, do you know an individual by the name of Daniel Rucker?

A I know him.

Q How long have you known him?

A Since about August of last year, August of '75 or September of '75.

Q Did there come a time that you had some conversations with Daniel Rucker regarding bank robbery?

A Yes, we did.

Q When did these conversations begin?

A I think it was around May of '76, June of '76.

Q What kind of conversations would you have or did you have?

A Well, he always would tell me that he has got some pl

1 and stuff like this. I would say something like, "what
2 is it" and he would say, "I am not going to tell if you
3 are not going to be with it." In a couple of months we
4 got around to it and he said he had to go talk to
5 somebody else or something like this. This would go on
6 and on, it was like a battle or something. Then finally
7 he came to me one day. I forgot what he said, it was
8 in the early part of September of '76 and he told me
9 what he had planned, how he wanted it done, and the
10 way he wanted it done.

11 Q What did he have planned?

12 A The First National Bank.

13 Q Where did you have this conversation?

14 A I forgot where it was, I think at his house or at a
15 neighbors house next door.

16 Q It was in the Seneca Manor Apartments?

17 A It was.

18 Q You gave a statement to the F.B.I. to Thomas Carney,
19 do you recall that?

20 A Yes, I do.

21 Q I show you that statement. See if that, in the first
22 portion of that you talked about an occurrence on
23 September 29, 1976, is that the time you are talking
24

1 about now?

2 A Yes, that is when I got picked up.

3 Q Then that is the one you described to me?

4 A Yes, that is the one.

5 Q It says here that you were home at 134 Seneca Manor
6 Drive when Eugene Smith came to your house, do you
7 recall that?

8 A Yes, I do.

9 Q That was the morning of September 29?

10 A It was.

11 Q Tell me now, with reference to this record, what happened
12 on that day, and where you went, and who you saw, and
13 what you talked about?

14 A It all started that morning. My mother called up and
15 I finally woke up. She told me that Gene, his real
16 name is Eugene Smith, was here and he wanted to talk to
17 me. I imagined it was urgent and told my mother to let
18 him come upstairs. He came upstairs and Eugene Smith
19 told me that him and Danny Rucker have got a plan how
20 to get some money. So I said, "tell me how." He said,
21 "you know the First National Bank up on Ridge Road?"
I told him no. He said, "Well, you don't have to know
it we will show it to you." So I said, "what is your

1 plan?" He said, "come on I will tell you." So I got
2 up and went to Danny's house, that is where Gene told
3 me they were at. I went over there and Danny Rucker
4 was over there. We sat down in the living room and he
5 told me how to do it. I should do it because I didn't
6 have no record. So at this I told him I didn't know
7 I had never done nothing like that. He said, "don't
8 worry about that." So he said, "it is easy all you have
9 to do is go in," and just stuff like that. He talked
10 about a gun. I said, "forget it, I am not going with
11 no gun. If you have the gun you might have to use it."
12 He said, "you don't have to use it." I said, "you do."
13 Eugene Smith was writing out a note on how it should
14 be done and Danny was talking and all I had to do was
15 go in there but first park the bike on the blind side
16 of the building.

Q Who was doing the initial planning?

A Danny Rucker.

Q Go ahead.

A Park the bike on the blind side of the building and he
gave me a pair of shades, red tinted shades and a red
hat. He said, "all you got to do is go in there and
give the bank teller the note. Scare her up by telling

her you are going to shoot if she doesn't give you the money and tell her you have got a gun." I said, "okay." I just said that to keep him quiet. I wouldn't tell her nothing like that. It was me, Danny Rucker, and Eugene Smith, who rode the bike up there because Danny Rucker had to take the bike out of his house in the basement. I think it was his sisters bike, that is what he told me. - Then he said, "you got to take something to make it look like you have a gun." I said "I won't take anything." He said, "take a rock," and I said, "no." He said, "take this metal thing." It was not really good for anything but it makes it look like a gun." I said, "all right." So I took that with me and I went up to the bank. Again, Gene rode the bike to Gold Circle. We all went, as a matter of fact and Gene Smith and Danny Rucker said they would be at Gold Circle. All I got to do is take the bike and go there and park it on the blind side and go in and give the lady the note. If she gives me the money then go. When you go in make sure you mean it be tell her you are going to shoot her, you have got a gun, just stuff like that, and you will use it. So I just told him, I said, "yes." I was not going to say it

1 I just told him that so we wouldn't get into any
2 argument or nothing like that. I went up there and
3 parked the bike on the blind side of the bank. I went
4 in and I was in there about ten minutes. This little
5 boy was at the counter so I was waiting around and I
6 started to sweat. I never had done anything like that
7 and I forgot to put my hat on and my shades. I just
8 forgot. When I went in there I guess they saw something
9 was up because I was sweating and it was cold outside.
10 So the little boy finally went outside. I went up to
11 the counter and I passed her the note. She looked at it
12 and passed the note again. Then I just told her not
13 to try any tricks. I told her I was a junkie and I
14 needed the money that was why I was doing it. I didn't
15 want to say I had a gun or I would shoot her, I told
16 her I was a junkie and need a fix. So the lady handed
17 the money over and I went out the building. I went back
18 to Gold Circle on the bike and Gene Smith and Danny
19 Rucker were not there. I had to go inside looking for
20 them. So finally Gene Smith came along and he said,
21 "did you do it" and I said, "yes." He said, "where is
22 the money." I gave him a lot of money. I don't know
23 how much it was. So he took it and then the plan was

1 that Danny Rucker fixed up is that Gene would take
2 the bike and money and go back to the apartment and
3 Gene took the money and he took the bike. Finally
4 Danny Rucker came up and he said, "where is the rest of
5 the money." I said, " I gave it to Gene." He said,
6 "is that all?" I was so scared I still had more on me.
7 I offered to give it to him but he said he didn't want
8 it then and that he could come back later for it. He
9 was suppose to come back with his mothers car to pick
10 it up, he had left it though. Then the bike was gone
11 and Gene didn't take the bike. Then I went around and
12 bought myself a pair of pants and a shirt, that is
13 when I got busted.

14 Q Have you seen Danny Rucker since that time?

15 A I have seen Gene Smith.

16 Q Where did you see him, did he visit you?

17 A I had seen him at Irondequoit when he was there for
18 a preliminary hearing.

19 Q And Rucker has not tried to contact you at all?

20 A No.

21 Q I want to show you a spread of photographs which are
22 marked as Grand Jury exhibits and we used these before
23 I would like you to pick out of these photographs, if

1 you can, the person you know as Daniel Rucker?

2 A This one.

3 Q You have picked Grand Jury Exhibit Four and the name
4 on back is Daniel Lee Rucker, date of birth 8-23-57.
5 Please pick out the person you know as Eugene Carlton
6 Smith?

7 A (Witness complies)

8 Q You have chosen Grand Jury Exhibit Number Five and the
9 date of birth is January 13, 1956, Eugene Carlton
10 Smith.

11 Q Is this the only bank that you have ever robbed with
 Daniel Rucker?

12 A Yes, it is.

13 Q Did Rucker have any weapons at his house, guns of any
14 sort that you saw?

15 A No, I never saw one on that day.

16 Q But he told you that he would give you a gun to
17 use during the bank robbery?

18 A Yes, he told me that, Gene Smith, and Danny Rucker said
19 I could use that rifle that he had sawed-off. I said
20 I wouldn't take it.

 MR. HOULIHAN: Are there any questions
 from members of the Grand Jury?

JUROR: Did I understand you to say
you didn't use your glasses or hat?

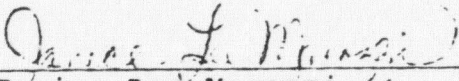
THE WITNESS: No, I did not use them.

MR. HOULIHAN: If there are no other
questions, you are free to go.

- - -

C E R T I F I C A T E

I, Janice Lee Marozzi, hereby certify that I did report in machine shorthand the foregoing proceedings had in the above-entitled matter at the time and place hereinbefore set forth; I do further certify that the foregoing transcript, consisting of eleven (11) typewritten pages is a true and correct transcript of my said stenographic notes.



Janice Lee Marozzi
Court Reporter
1139 Alliance Building
183 East Main Street
Rochester, New York

FEDERAL BUREAU OF INVESTIGATION

-1-

Date of transcription 10/20/76

EDWARD LEE BROWN, Inmate, Monroe County Jail, Rochester, New York, after being advised of his Constitutional Rights and executing an "Interrogation; Advice of Rights" Form, advised as follows:

On September 29, 1976, BROWN stated he was home at 134 Seneca Manor Drive, sleeping, when one EUGENE SMITH, a Negro male, age 20, came to his home requesting to talk with him. SMITH and BROWN walked to the home of DANIEL RUCKER, 241 Seneca Manor Drive, where a discussion took place concerning the bank robbery that RUCKER said he had planned. BROWN indicated RUCKER stated that for several months he had been planning a robbery of the First National Bank on Ridge Road near the Gold Circle store and that RUCKER wanted BROWN to rob this bank. BROWN stated he was reluctant to do this, but that RUCKER persuaded him (BROWN) that it was an easy touch and that they all would make a lot of money. RUCKER stated to BROWN that he would provide some "shades" and a gun for BROWN to use in the bank robbery. BROWN stated he immediately objected to the use of a gun in any robbery. BROWN stated that RUCKER began to write a bank robbery note demanding money, but instead explained to BROWN the inside floor plan of the bank, while EUGENE SMITH wrote a demand note for money and placed it in an envelope for BROWN to use. After some discussion, BROWN, RUCKER and SMITH went next door to 235 Seneca Manor Drive, the home of EUGENE SMITH, where SMITH showed BROWN a .22 caliber rifle which had been altered, in that the barrel was sawed off.

BROWN stated that both RUCKER and SMITH urged BROWN to take this weapon with him to the bank, but BROWN refused to take the weapon and stated he would not rob the bank with a gun. After discussions about the gun, BROWN stated that RUCKER, BROWN and SMITH went back to 241 Seneca Manor Drive where RUCKER displayed for BROWN a green ten speed bicycle which RUCKER stated belonged to his sister, and urged BROWN to use this for a getaway vehicle.

BROWN stated that RUCKER then gave him a pair of metal cutters to put in his pocket, telling him that it would look like a gun. BROWN stated that he, RUCKER, and SMITH

Interviewed on 10/20/76 at Rochester, New York File # Buffalo 91-2033

by SAs THOMAS E. CARNEY and JOHN KSZYSTYNIAK, JR./TEC:dms Date dictated 10/20/76

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BU 91-8033

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traveled to the Gold Circle store on Ridge Road with SMITH riding the bicycle. BROWN stated that when they passed the First National Bank on Ridge Road, DANNY RUCKER pointed out that when BROWN approached the bank he should hide the ten speed bicycle on the "blind side" of the bank and go in and hand the teller a note, and if need be, threaten to shoot the teller. BROWN stated that even though RUCKER advised him to threaten the teller, he decided against doing this.

BROWN stated that RUCKER instructed him that after he got the money from the bank that he should ride the bicycle to the Gold Circle Store, where he, RUCKER, and SMITH would be waiting to split up the money. BROWN stated that he then rode the bicycle to the bank as RUCKER had instructed him and approached a teller inside the bank. BROWN stated he waited until a little boy left the bank and he handed the envelope to one teller. BROWN stated that the teller looked at the note and gave it to another teller, who then gave him money.

BROWN stated he then exited the bank and rode the bicycle to the Gold Circle store and upon arriving, could not find RUCKER and SMITH immediately. BROWN stated he hid the bicycle between some parked cars and went into the Gold Circle store, and after a few moments, was able to locate SMITH and he gave SMITH approximately \$700. SMITH stated to BROWN at this point that he could take the money and the bicycle and meet RUCKER at RUCKER's house so that they could split up the money.

BROWN stated he was then walking around the Gold Circle store and after about five minutes, RUCKER approached BROWN and asked where "the rest of the money is." BROWN stated he started to give him some of the money, but RUCKER stated "not here, I'll get it from you later," and he left.

BROWN stated a few minutes passed and police officers arrested him at the Gold Circle Store.

1. OFFENSE OR CHARGE (INCLUDE DEGREE) P.L.		2. CLASSIFICATION OF OFFENSE (SUPERVISORY REVIEW) P.L. Acting Sgt. Corio		3. CR. NO. (22-1115) 805729	
4. TIME OF OCCURRENCE 9:29 PM 7/6/76		5. WHEN AND WHERE REPORTED 241 SENECA MAJOR		6. LOCATION OF OFFENSE (HOUSE NO., STREET NAME) 241 SENECA MAJOR DR.	
7. NAME OF FIRST, MIDDLE, OR SURNAME IF BUSINESS ROCKLER SALLY		8. ADDRESS (HOUSE NUMBER, STREET NAME) 241 SENECA MAJOR DR.		9. CITY, STATE, ZIP 338-1307	
10. VICTIM'S PLACE OF EMPLOY, OR SCHOOL NAME NONE		11. BUSINESS PHONE NONE		12. SEX, RACE, AGE B 145	
13. PERSON REPORTING - SIGNATURE - DATE [Signature]					
14. IF ARREST IS MADE, NAME ARRESTEES IN NARRATIVE. PLACE THE NUMBER OF ARRESTEES IN BOX A. IF NONE PLACE AN X IN BOX A. X					
15. INDICATE WITH PROPER CODE IN BOXES PROVIDED PERSONS RELATIONSHIP TO INVESTIGATION W-1 WITNESS #1, W-2 WITNESS #2, R REPORTING PERSON, P/A PERSON WITH KNOWLEDGE INCLUDING REPORTING PERSONS NAME IF DIFFERENT FROM VICTIM'S IF CITIZEN INFORMATION FORM R.P.D. 1148 IS LEFT WITH ANY OF THESE PERSONS INDICATE BY CIRCILING PERSONS DESIGNATED					
ADDRESS CHECKED		PERSON INTERVIEWED		INFORMATION PROVIDED - USE NARRATIVE IF NEEDED	
ADDRESS CHECKED		PERSON INTERVIEWED			
ADDRESS CHECKED		PERSON INTERVIEWED			
ADDRESS CHECKED		PERSON INTERVIEWED			
ADDRESS CHECKED		PERSON INTERVIEWED			
ADDRESS CHECKED		PERSON INTERVIEWED			
16. WAS THERE A WITNESS TO THE CRIME? X					
17. CAN A SUSPECT BE NAMED? X					
SUSPECT #1 (NAME INCLUDE ANY A-K-A INFO)		SUSPECT #2 (NAME INCLUDE ANY A-K-A INFO)		SUSPECT #3 (NAME INCLUDE ANY A-K-A INFO)	
18. CAN A SUSPECT BE LOCATED? X					
SUSPECT #1 MAY BE LOCATED AT		SUSPECT #2 MAY BE LOCATED AT		SUSPECT #3 MAY BE LOCATED AT	
19. CAN A SUSPECT BE DESCRIBED? X					
SUSPECT #1 DESCRIPTION		SUSPECT #2 DESCRIPTION		SUSPECT #3 DESCRIPTION	
DESCRIBE EACH SUSPECT - USING AGE, SEX, RACE, HEIGHT, WEIGHT, ANY IDENTIFYING SCARS, MARKS AND CLOTHING DESCRIPTION					
20. CAN A SUSPECT BE IDENTIFIED? X					
IF SUSPECT INFORMATION HAS BEEN GIVEN		USING APPROPRIATE CODE IN THE BOXES PROVIDED - INDICATE WHO CAN IDENTIFY SUSPECT			
21. OUT VIA RADIO COMM. PLACE AN X IN BOX 21.					
22. FILL IN LICENSE PLATE INFORMATION IF IT IS AVAILABLE.		MODEL/MAKE		YEAR	
23. CAN THE SUSPECT VEHICLE BE IDENTIFIED? X		TYPE		COLOR TOP/BOTTOM	
24. IF SUSPECT VEHICLE INFORMATION WAS GIVEN VIA RADIO COMMUNICATION PLACE AN X IN BOX 24.		IDENTIFYING CHARACTERISTICS			
25. IF THE STOLEN PROPERTY IS TRACEABLE INDICATE IN THE SPACE PROVIDED BELOW					
26. DESCRIBE PROPERTY TAKEN/DAMAGED		27. WHERE PROPERTY WAS REMOVED FROM		28. PROPERTY IDENTIFICATION INFORMATION	
29. PROP. VAL.					
SCHWINN GIRLS BIKE		REAR YARD.		SER# GL524581	
10 SPEED - GREEN.				MODEL# 1679.	
NO FENDERS.				GREEN TAPE ON	
HAND BRAKES.				HANDLE BARS.	
30. WHERE HOSPITALIZED		31. ATTENDING PHYSICIAN		32. DATE/TIME PRONOUNCED	
33. PRONOUNCING PHYSICIAN - WHERE		34. MEDICAL EXAMINER NOTIFIED		NAME	
35. IS THERE A SIGNIFICANT M.O. PRESENT? IF YES DESCRIBE IN NARRATIVE X					
36. PROPERTY INV. NO.		37. NATURE OF INJURY		38. TYPE OF WEAPON, INSTRUMENT OR FORCE USED	
39. TYPE OF WEAPON, INSTRUMENT OR FORCE USED		40. IS THERE SIGNIFICANT PHYSICAL EVIDENCE PRESENT? IF YES DESCRIBE IN NARRATIVE X		41. TECH WORK DONE BY	
42. HAS AN EVIDENCE TECHNICIAN BEEN CALLED?		43. IS EVIDENCE TECHNICIAN REPORT POSITIVE?		44. PLACE AN X IN BOX K	
45. IS THERE A SIGNIFICANT REASON TO BELIEVE THAT THE CRIME MAY BE SOLVED WITH A REASONABLE AMOUNT OF INVESTIGATIVE EFFORT? X					
46. WAS THERE A DEFINITE LIMITED OPPORTUNITY FOR ANYONE EXCEPT THE SUSPECT TO COMMIT THE CRIME? IF NO PLACE AN X IN BOX M X					
47. NARRATIVE - SUMMARIZE DETAILS OF CRIME INCLUDING A DESCRIPTION OF EVENTS, ANY ADDITIONAL INFORMATION WHICH IS AN EXTENSION OF ANY OF THE ABOVE BOXES, NAMES OF ARRESTED, NAMES OF OTHER OFFICERS OR UNITS ASSISTING.					
above bike was taken from the rear yard while victim was away from home. Unable to locate any witnesses.					
48. IS ONE OR MORE OF THE SOLVABILITY FACTORS PRESENT IN THIS REPORT?		49. REPORTING OFFICER		50. ASSIGNED RST	
YES (FIELD FOLLOW-UP) X NO (OFFICE REVIEW)		51. STATUS FOR REVIEW CENTER		52. UNFOUNDED	
FIELD SUPERVISORS REVIEW		53. COMPLETE		54. RECOMMEND OFFER	
55. OPEN		56. STATUS FOR REVIEW CENTER		57. UNFOUNDED	

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111
Charge

5 1
2 THE COURT: Now, I will try to make this as
3 quick as possible. I realize some of you may be
4 getting a little hungry, but I think you can look
5 at least forward to a good lunch.

6 The charge is divided into roughly four parts.
7 The first is preliminary instructions on the law.
8 The second is a discussion of the charges themselves.
9 The third is some instructions with respect to the
10 testimony of witnesses and how you treat testimony of
11 various witnesses. The fourth part pertains to how
12 you comport yourself as jurors during your delibera-
13 tions.

14 I am not going to ring a bell as I reach each
15 different part, but I think you will see when I switch
16 gears.

17 Secondly, it is my practice to read the
18 instructions rather than give them extemporaneously.
19 I am fully aware this makes it more difficult for you
20 to follow, than if I give it extemporaneously, but
21 on the other hand, it minimizes the risk of error, and
22 I think that is more important and it does require
23 you to pay more attention than you would otherwise
24 have to.

25 Now that you have heard the evidence and the

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201

852-7103

112
Charge

6 1
2 arguments it becomes my duty to give the instructions
3 of the Court as to the law applicable to this case.

4 It is your duty as jurors to follow the law
5 as stated in the instructions of the Court, and to
6 apply the rules of law so given to the facts, as
7 you find them, from the evidence in the case.

8 You are not to single out one instruction
9 alone as stating the law, but must consider the
10 instructions as a whole.

11 Neither are you to be concerned with the
12 wisdom of any rule of law stated by the Court.
13 Regardless of any opinion you may have as to what
14 the law ought to be, it would be a violation of your
15 sworn duty to base a verdict upon any other view of
16 the law than that given in the instruction^s of the
17 Court; just as it would be a violation of your sworn
18 duty, as judges of the facts, to base a verdict upon
19 anything but the evidence in the case.

20 You must not permit yourself to be governed
21 by sympathy, bias, prejudice or any other considera-
22 tion not founded on evidence, and these instructions
23 on the law.

24 Justice through trial by jury must always
25 depend upon the willingness of each individual juror

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201

852-7103

¹¹³
Charge

to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the not-guilty pleas of the accused. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit you to be governed by sympathy, prejudice or public opinion. Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

I am not going to send the exhibits which have been received in evidence with you as you retire for your deliberations. You are, however, entitled to see any or all of these exhibits, as you consider your verdict. I suggest that you begin your deliberations and then, if it would be helpful to you, you may ask for any or all of the exhibits simply by sending a note to me through one of the Deputy

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT

225 CADMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

852-7105

Marshals stationed outside your jury room door.

With respect to read-back of testimony, as you must consider these instructions on the law as a whole, so, too, should you consider all the evidence and the testimony as a whole, at least in the first instance. I suggest that and strongly urge you to not send a note in right away and ask for one particular bit of testimony to be read back to you, because in that event, you may highlight that testimony in having it read twice above all other testimony and may give it undue weight. So try to view the picture as a whole. At least give it a bona fide attempt. If at some point down the road you feel you cannot do without having a portion of a witness' testimony read, you may so designate the portion and we will do our best to find it for you among Miss Frey's voluminous notes here, and have it read to you. It may take a little time to do so, I must point that out to you, but you will get it read to you, if you need it.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against an accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime.

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT

225 CADMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

852-7105

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One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, the proof of facts and circumstances which rationally imply the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind. By way of example, the footprints of a man in the sand implied to Robinson Crusoe that there was another man with him on the desert island, and indeed there was, the man Friday. Thus, on the one hand, you may have direct evidence of the issue, and on the other hand, you may have circumstantial evidence of the issue. The law does not hold that one type of evidence is necessarily of better quality than the other one. The law requires only that the Government prove its case beyond a reasonable doubt both on the direct and circumstantial evidence. At times, the jury might feel that circumstantial evidence is of better quality. At other times, they may feel direct evidence is of better quality. That judgment is left entirely to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant,

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a jury be satisfied of the defendant's guilt beyond a reasonable doubt through all the evidence in the case.

The law presumes the defendant to be innocent of crime. Thus, a defendant, though accused, begins the trial with a clean slate with no evidence against him. And the law permits nothing but legal evidence presented for the jury to be considered in support of any charge against the accused. So, the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from the natural sympathy which we all have for others.

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It is not necessary for the Government to prove the guilt of a defendant beyond all possible doubt, because if that were the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any controverted fact which, by its nature, is not susceptible of mathematical certainty. In consequence, the law says that a doubt should be reasonable doubt, not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

Again, a reasonable doubt is a doubt that is based upon reason and must be sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

The requirement of proof beyond a reasonable doubt operates on the whole case and not on the

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separate bits of evidence. Each individual item of evidence need not be proven beyond a reasonable doubt.

Now, bear in mind that it is your duty to give separate personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against the other defendant or defendants.

(continued next page)

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2 Each defendant is entitled to have his case
3 determined from evidence as to his own acts and
4 statements and conduct and any other evidence in the
5 case which may be applicable to him which I will
6 explain to you with respect to the conspiracy charges
7 later on. In the present case, for example, the
8 defendant Eugene Smith is only charged with respect
9 to the alleged bank robbery that occurred on September
10 29, 1976 with the First National Bank, Georgetown
11 Plaza Branch. The alleged bank robbery is subject to
12 Count two and Count four of the indictment. The testi-
13 mony that has been presented with respect to the
14 alleged bank robbery at the Marine Midland Bank, 1500
15 Hudson Avenue, on May 14, 1976 is not to be considered
16 with respect to the defendant Eugene Smith.

17 I am going to discuss the first two counts of
18 the indictment with you and then thereafter the third
19 and fourth of the conspiracy count with you.

20 Now, Count one of the indictment provides:

21 "That on or about May 14, 1976 in the Western
22 District of New York Daniel Lee Rucker, did enter
23 the Marine Midland Bank, 1500 Hudson Avenue, the
24 deposits of which were insured by the Federal Deposit
25 Insurance Corporation, with intent to commit a felony

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3 affecting that bank, that is, the taking by force and
4 by violence and by intimidation in the presence of
5 the employees of the bank, money belonging to and in
6 the care, custody, control, management and possession
7 of the bank, all in violation of Title 18, United
8 States Code, Section 2113(a) and Section 2."

9 Count two charges:

10 "That on or about September 29, 1976, Eugene
11 Smith and Daniel Lee Rucker did enter the First National
12 Bank, Georgetown Plaza Branch, the deposits of which
13 were then insured by the Federal Deposit Insurance
14 Corporation, with intent to commit a felony affecting
15 such bank, that is, the taking by force and by violence
16 and by intimidation from the presence of employees of
17 such bank money belonging to and in the care, custody,
18 control, management and possession of the bank, all
19 in violation of the same sections as Count one."

20 Now, Section 2113(a) of Title 18 reads in
21 pertinent part as follows:

22 And I am going to read only the pertinent
23 portions thereof.

24 "Whoever enters or attempts to enter any bank
25 with the intent to commit in such bank any felony
affecting such bank and in violation of any statute of

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the United States or any larceny shall be in violation of the law..."

In both of these counts the Government also alleges a violation of Section 2 of Title 18 of the United States Code which is the so-called aiding and abetting section. That section reads as follows:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The essential elements of the crime charged in Counts one and two of the indictment which must be proven beyond a reasonable doubt are:

"1) The act or acts of entering a particular bank."

And;

"2) Doing such act or acts with the intent to commit a felony affecting the bank.

"3) Such felony being the taking by force, violence or intimidation from the presence of the employees of the bank money belonging to or in the care,

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custody, control, management of the bank.

"4) The doing of such act or acts knowingly and wilfully."

"5) The bank being one the deposits of which were insured by the Federal Deposit Insurance Corporation.

Now, as I indicated to you a moment ago, Section 2 of Title 18 of the United States Code provides that:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, is punishable as a principal;

And,

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

In other words, every person who wilfully participates in the commission of a crime may be found guilty of that offense. Participation is wilful if done voluntarily and intentionally, and with a specific intent to do something the law forbids,

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or with a specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime it is necessary that the accused wilfully associate himself in some way with the criminal venture, and wilfully participate in it as he would in something he wishes to bring about; that is to say, that he wilfully seeks by some act or omission of his to make the criminal venture succeed.

An act or omission is wilfully done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.

You of course may not find any defendant guilty unless you find beyond reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and

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2 abetted the crime, unless you find beyond a reasonable
3 doubt that the defendant was a participant and not
4 merely a knowing spectator.

5 Now, as used in this Section 2113 of the United
6 States Code, the term "Bank" means any bank the deposits
7 of which are insured by the Federal Deposit Insurance
8 Corporation. And I believe there was some evidence
9 to that effect which was introduced here. And of
10 course you must determine whether or not that evidence
11 is credible and acceptable.

12 To take, or attempt to take, by intimidation
13 means wilfully to take, or attempt to take, by putting
14 in fear of bodily harm. Such fear must arise from
15 the wilful conduct of the accused, rather than from
16 some temperamental timidity of the victim; However, the
17 fear of the victim need not be so great as to result
18 in terror, panic or hysteria.

19 A taking, or an attempted taking, by intima-
20 tion must be established by proof of one or more
21 acts or statements of the accused which were done or
22 made, in such a manner, and under such circumstances,
23 as would produce in the ordinary person fear of bodily
24 harm.

25 However, actual fear need not be proved. Fear,

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like intent, may be inferred from statements made and acts done or omitted by the accused and by the victim as well; and from all the surrounding circumstances shown by the evidence in the case.

I am going to take up Counts three and four with you of the indictment. They are the so-called two conspiracy counts. First, I will read them to you:

Count three charges:

"From on or about May 8, 1976, and continuously thereafter up to and including the date of the filing of this indictment in the Western District of New York, Daniel Lee Rucker, the defendant, wilfully and knowingly did combine, conspire, confederate and agree with Roberto Louis Rivera, named herein as co-conspirator but not as a co-defendant and with diverse other persons to the Grand Jury unknown, to commit the following offense against the United States, to wit, a violation of Title 18, United States Code, Section 2113, to wilfully and knowingly enter the Marine Midland Bank, 1500 Hudson Avenue, Rochester, New York, and by force and violence and by intimidation take from the employees of the bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, a sum of money belonging to and in the care, custody, control,

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management and possession of that Bank, all in violation of Title 18, United States Code, Section 371,

"In furtherance of the conspiracy and to effect the objection thereof, the defendant performed the following overt acts:

"1. On or about May 12, 1976, Daniel Lee Rucker had a conversation with Roberto Louis Rivera.

"2. On or about May 12, 1976, Roberto Louis Rivera entered the Marine Midland Bank, located at 1500 Hudson Avenue, Rochester, New York.

"3. On or about May 14, 1976, Daniel Lee Rucker had a conversation with Roberto Louis Rivera.

"4. On or about May 14, 1976, Roberto Louis Rivera entered the Marine Midland Bank, 1500 Hudson Avenue, Rochester, New York."

Count four which is the second conspiracy count charges that:

"On or about September 29, 1976, and continuously thereafter up to and including the date of the filing of this indictment in the Western District of New York, Daniel Lee Rucker and Eugene Smith, the defendants wilfully and knowingly did combine, conspire and confederate and agree with each other and with Eddie Lee Brown, named herein as a co-conspirator but not as a

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co-defendant, and with diverse other persons to the Grand Jury unknown, to commit the following offense against the United States to wit: A violation of Title 18, United States Code, Section 2113, to wilfully and knowingly enter the First National Bank, Georgetown Plaza Branch, and by force and violence and by intimidation take from the employees of that bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, a sum of money belonging to the care, custody, and control, management and possession of that bank, all in violation of Title 18, United States Code, Section 371.

"In furtherance of the conspiracy and to effect the object thereof, the defendant performed the following overt acts:

"1. On or about September 29, 1976, Daniel Lee Rucker, Eugene C. Smith and Edward Lee Brown had a conversation.

"2. On or about September 29, 1976, Edward Lee Brown did enter the First National Bank, Georgetown Plaza Branch.

"3. On or about September 29, 1976, Daniel Lee Rucker and Eugene C. Smith each had a conversation with Edward Lee Brown in the Gold Circle Store, near the

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First National Bank, Georgetown Plaza Branch."

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Now, I have read to you Section 2 of the pertinent portions, Section 2113(a) and Title 18.

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In connection with the first two counts of the indictment the counts charge a violation of Section 371 of Title 18 of the United States Code which provide in pertinent part as follows:

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"If two or more persons conspire either to commit any offense against the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to affect the subject to the conspiracy each shall be in violation of the law."

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The following are the essential elements which must be proven beyond a reasonable doubt in order to establish the offense of conspiracy charged in Count three and four of the indictment.

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"1) That there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment;

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"2) That the conspiracy described in the indictment was wilfully formed and existed at or about the time alleged;

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"3) That the conspiracy was so wilfully formed

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and existing for the purpose of taking by force, violence and intimidation or for the purpose of entering the particular bank with the intent to commit a felony i.e., the taking by force, violence and intimidation from the person and presence of employees which were in the care, custody, control, management and possession of said bank the deposits of which were then and there insured by the FDIC;

"4) That the defendant wilfully became a member of the conspiracy;

"5) That one of the conspirators thereafter knowingly committed one of the overt acts charged in the indictment at or about the time and place alleged.

"6) That such overt act was knowingly done in furtherance of the object of the conspiracy as charged; and

"7) That the defendant was knowingly a member of the conspiracy with the intent to further one of its objectives."

If the jury should find beyond a reasonable doubt from the evidence in the case that the existence of the particular conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy, one of the overt acts alleged was

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2 knowingly done by one or more of the conspirators in
3 furtherance of some object or purpose of a conspiracy,
4 then proof of the conspiracy offense charged is
5 complete, and it is complete as to every person found
6 by the jury to have been wilfully a member of the
7 conspiracy at the time the overt act was committed.

8 Now, what is a conspiracy? A conspiracy is
9 a combination of two or more persons, by concerted
10 action, to accomplish some unlawful purpose. So, a
11 conspiracy is a kind of partnership in criminal purposes
12 in which each member becomes the agent of every
13 other member. The gist of the offense is a combination
14 or agreement to disobey, or to disregard the law.

15 Mere similarity of conduct among various persons,
16 and the fact they may have associated with each other;
17 and may have assembled together and discussed common
18 aims and interests, does not necessarily establish
19 proof of the existence of a conspiracy. Mere associa-
20 tion may not, in and of itself, be the basis for an
21 inference of guilt of a conspiracy.

22 However, the evidence in the case need not show
23 that the members entered into any expressed or formal
24 agreement, or that they directly, by words spoken or
25 in writing, stated between themselves what their object

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or purpose was to be, or the details thereof; or the method by which the object or purpose was to be accomplished.

What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon were actually used or put into operation; nor that all of the persons charged to have been members of the alleged conspiracy was such.

What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed, and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy; as charged in the indictment; and that two or more persons, including the accused, were knowingly members of the conspiracy

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14 1 as charged in the particular counts of the indictment.

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3 In your consideration of the evidence in the
4 case as to the offense of the conspiracy charge, you
5 should first determine whether or not the conspiracy
6 existed as alleged in the indictment. If you conclude
7 that the conspiracy did exist, you should next determine
8 whether or not the accused wilfully became a member
9 of the conspiracy.

10 If it appears beyond a reasonable doubt from
11 the evidence in the case that the conspiracy alleged
12 in the indictment was wilfully formed, and that a
13 defendant wilfully became a member of the conspiracy
14 either at its inception or afterwards, and that there-
15 after one or more of the conspirators committed one or
16 more overt acts in furtherance of such object or
17 purpose of the conspiracy, then there may be a conviction
18 even though the conspirators may not have succeeded
19 in accomplishing their common object or purpose, and
20 in fact, may have failed in so doing.

21 The extent of any defendant's participation
22 moreover is not determinative of his guilt or innocence.
23 A defendant may be convicted as a conspirator even
24 though he have played only a minor part in the
25 conspiracy.

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2 An overt act is an act knowingly committed
3 by one of the conspirators in an effort to effect or
4 accomplish some object or purpose of the conspiracy.
5 The overt act need not be criminal in nature, if
6 considered separately and apart from the conspiracy.
7 It may be as innocent as the act of a man walking
8 across the street, or driving an automobile or using
9 a telephone. It must, however, be an act which
10 follows and tends towards accomplishment of the
11 plan or scheme. It must be knowingly done in
12 furtherance of some object or purpose of the con-
13 spiracy charged in the indictment.

14 One may become a member of a conspiracy
15 without full knowledge of all the details of the
16 conspiracy. On the other hand, a person who has no
17 knowledge of a conspiracy, but happens to act in a
18 way which furthers some object or purpose of the
19 conspiracy, does not thereby become a conspirator.

20 Before the jury may find the defendant or
21 any other person has become a member of the
22 conspiracy, the evidence in the case must show
23 beyond a reasonable doubt that the conspiracy was
24 knowingly formed, and that the defendant or other per-
25 son who is claimed to have been a member willfully

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participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily or intentionally and with specific intent to do something the law forbids. That is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant or any other person, with understanding of the unlawful character of the plan, knowingly encourages, advises, or assists, for the purpose of furthering the undertaking or scheme, he, thereby becomes a willful participant -- a conspirator.

One who willfully joins in an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the jury should consider the actions and the declarations of all the alleged participants. However, in determining whether a particular defendant was a member of a conspiracy, if any, the jury should consider only his acts and statements. He cannot

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be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside of the Court by one person may not be considered as evidence against any person who was not present, and did not hear the statement made or see the act done. Therefore, statements of any conspirators, which are not in furtherance of the conspiracy or made

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2 before the conspiracy or after its termination,
3 may be considered as evidence only against the
4 person making them.

5 Now the indictment charges a conspiracy
6 in the first count and the third count between the
7 defendant Daniel Lee Rucker and Roberto Louis Rivera
8 and the second and fourth count charges a conspir-
9 acy between Daniel Lee Rucker, Eugene Smith and
10 Eddie Lee Brown.

11 A person cannot conspire with himself,
12 and therefore, you cannot find a defendant guilty
13 of conspiracy unless you find beyond a reasonable
14 doubt that he participated in the conspiracy as
15 charged with at least one other person.

16 Now, an act is done knowingly if done vol-
17 untarily and intentionally, and not because of
18 mistake or accident or other innocent reason.

19 The purpose of adding the word knowingly is
20 to insure that no one would be convicted for an
21 act done because of mistake or accident, or other
22 innocent reason.

23 An act is done willfully if done voluntarily
24 and intentionally, and with the specific intent
25 to do something the law forbids, that is to say,

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with bad purpose either to disobey or to disregard the law.

Knowledge and intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind.

But you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or omitted by a defendant, and all other facts and circumstances in evidence which indicate his state of mind.

Now, do you recall that during the course of the trial that I gave you special instructions with respect to the alleged prior similar act by the defendant Rucker. And I said that I will repeat that instruction to you at the conclusion of the trial and I do so now.

The fact that the accused may have committed another offense at some time is not any evidence or proof whatever that, at another later time, the accused committed the offense charged in the indictment even though both offenses are of a like nature. Evidence as to an alleged earlier offense of a like nature may not therefore be considered by the

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6 1 jury, in determining whether the accused did the
2 act charged in the indictment. Nor may such evi-
3 dence be considered for any other purpose whatever,
4 unless the jury first finds that other evidence
5 in the case, standing alone, establishes beyond
6 a reasonable doubt that the accused did the acts
7 charged in the indictment, leaving aside only the
8 question of identity and whether the accused did
9 it knowingly, intentionally and willfully and
10 not because of mistake, accident or other innocent
11 reason.
12

13 If the jury should find beyond a reasonable
14 doubt from the other evidence in the case that the
15 accused did the act charged in the indictment,
16 then the jury may consider evidence as to an
17 alleged earlier offense of a like act or nature
18 in determining the identity, the motive, the state
19 of mind, knowledge or intent and/or whether there
20 was a plan, scheme or design pursuant to which the
21 accused did the act charged in the indictment. And
22 where all the elements of an alleged earlier
23 offense or an act of a like nature are established
24 by evidence which is clear and conclusive, the
25 jury may, but is not obliged to draw the inference

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and find that in doing the acts charged in the indictment, the accused was the one who did the act or that the accused acted pursuant to a plan, scheme or design or acted willfully, knowingly and with a specific intent, and not because of mistake or accident or other innocent reason.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed accept the stipulation as evidence, and regard that fact as proved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, you may accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so since you are the sole judges of the facts.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may

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2 have called them; and all exhibits received in evi-
3 dence, regardless of who may have produced them
4 and all facts which may have been admitted or stip-
5 ulated; and all facts and events which may have
6 been judicially noticed; and all applicable presump-
7 tions stated in these instructions.

8 Any evidence as to which an objection was
9 sustained by the Court, and any evidence ordered
10 stricken by the Court, must be entirely disregarded.

11 Evidence does not include, however, what is
12 brought out from witnesses on cross-examination as
13 well as what is testified to on direct examination.

14 Unless you are otherwise instructed, any-
15 thing you may have seen or heard outside the court-
16 room is not evidence, and must be entirely disre-
17 garded.

18 You are to consider only the evidence in
19 the case and your verdict is to be based on the
20 evidence only. But in your consideration of the
21 evidence, you are not limited to the bald state-
22 ments of the witnesses. In other words, you are
23 not limited solely to what you see and hear as
24 the witnesses testified. You are permitted to
25 draw, from facts that you find have been proved,

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such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

If a lawyer asked a witness a question which contains an assertion of fact you may not consider the assertion as evidence of that fact. The lawyers' statements are not evidence.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness

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2 may bear to either side of the case; the manner
3 in which each witness might be affected by the
4 verdict; and the extent to which, if at all, each
5 witness is either supported or contradicted by
6 other evidence in the case.

7 Inconsistencies or discrepancies in the
8 testimony of a witness, or between the testimony
9 of different witnesses, may or may not cause the
10 jury to discredit such testimony. Two or more
11 persons witnessing an incident or a transaction
12 may see or hear it differently; and innocent mis-
13 recollection, like failure of recollection, is
14 not an uncommon experience. In weighing the
15 affect of a discrepancy, always consider whether
16 it pertains to a matter of importance or an unim-
17 portant detail, and whether the discrepancy re-
18 sults from innocent error or intentional false-
19 hood.

20 After making your own judgment, you will
21 give the testimony of each witness such credibil-
22 ity, if any, as you think it deserves.

23 An accomplice, and there were two at
24 least, two who testified here, Roberto Rivera and
25 Eddie Brown, is one who unites with another person

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11 1
2 in the commission of a crime, voluntarily and
3 with common intent. An accomplice does not become
4 incompetent as a witness because of participation
5 in the crime charged. On the contrary, the
6 testimony of an accomplice alone, if believed by the
7 jury, may be of sufficient weight to sustain a
8 verdict of guilty, even though not corroborated or
9 supported by other evidence. However, the jury
10 should keep in mind that such testimony is always
11 to be received with great caution and weighed with
12 great care.

13 In the event you should find no corroborative
14 evidence as to either or both of the defendants
15 as to such accomplice's testimony, you should never
16 convict such a defendant upon the unsupported testi-
17 mony of an alleged accomplice, unless you believe
18 that unsupported testimony beyond a reasonable
19 doubt.

20 One of the contentions of the defendants
21 is that the accomplice's testimony implicating
22 them as perpetrators of the crimes charged in the
23 indictment is inherently suspect because such a
24 witness has a stake, an important personal stake
25 in the outcome of the trial. As indicated, the

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12 1 testimony of a person who provides evidence against
2 a defendant for immunity from punishment or for
3 personal advantage or vindication, must be exam-
4 ined and weighed by the jury with greater care
5 than the testimony of an ordinary witness. You
6 must determine whether an accomplice's testimony
7 has been affected by interest or by prejudice
8 against a defendant. That is you must determine
9 whether an accomplice is to be believed or whether
10 he has perjured himself hoping to obtain some con-
11 sideration from the Government or for some other
12 personal reason.
13

14 The law does not prohibit the use of an
15 accomplice, but whether you approve of their use
16 is not to enter into your consideration of this
17 case. In certain types of crimes the Government
18 of necessity, is frequently compelled to rely upon
19 the testimony of accomplices, persons with crim-
20 inal records, or informers. Otherwise, it would
21 be difficult to detect or prosecute some wrong-
22 doers, and this is particularly true in conspiracy
23 cases. Often it has no choice in the matter. It
24 must take the witnesses to the transaction as they
25 are.

Charge of the Court

It is the universal rule in the Federal Court that defendants may be convicted on the testimony of an accomplice standing alone if you believe such testimony beyond a reasonable doubt. This would still be so even though the accomplice was a confirmed criminal.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of the witness or give it such credibility as you may think it deserves.

The testimony of a witness may be discredited or impeached by showing that the witness had been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior convictions do not render a witness incompetent

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2 to testify, but is merely a circumstance which you
3 may consider in determining the credibility of the
4 witness. It is the province of the jury to deter-
5 mine the weight to be given to any prior conviction
6 as impeachment.

7 A defendant who wishes to testify, however,
8 is a competent witness; and the defendant's testi-
9 mony is to be judged in the same way as that of
10 any other witness.

11 The law permits a defendant, at his own
12 request, to testify on his own behalf. The testi-
13 mony of an individual defendant is before you.
14 You must determine how far it is credible. The
15 deep personal interest which every defendant has
16 in the result of his case should be considered in
17 determining the credibility of his testimony. You
18 are instructed that interest creates a motive for
19 false testimony; that the greater the interest
20 the stronger is the temptation, and that the
21 interest of a defendant is of a character possessed
22 by no other witness and is, therefore, a matter
23 which may seriously affect the credence that should
24 be given to his testimony.

25 Evidence of a defendant's previous conviction

Charge of the Court

of a felony is to be considered by the jury, only insofar as it may affect the credibility of the defendant as a witness, and must never be considered as evidence of guilt of the crime for which the defendant is on trial.

Conduct of a defendant, including statements knowingly made and acts knowingly done, upon being informed that a crime has been committed, or upon being confronted with a criminal charge, may be considered by the jury in the light of all other evidence in the case and in determining guilt or innocence, consciousness of guilt or of course in determining the innocence.

When a defendant voluntarily and intentionally offers an explanation or makes some statement tending to show his innocence or this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily it's reasonable to infer that an innocent person does not find it necessary to invent or fabricate a statement in order to establish his innocence. Whether or not evidence as to a defendant is voluntarily made, the significance

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to be attached to any such evidence are matters collectively within your province. A statement or an act that is knowingly made or done or made is one done voluntarily and not because of mistake or innocent reason the jury will also bear in mind.

The law never imposes upon a defendant in a criminal case to produce any witnesses or produce any evidence.

It is the duty of the attorneys on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because an attorney has made objections.

Upon allowing the testimony or other evidence to be introduced over the objection of the attorney, the Court does not, unless expressly so stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all the witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness, the jury

Charge of the Court

must disregard the question entirely and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any question.

The fact that the Court has asked one or more questions of a witness for clarification or admissibility of evidence purposes is not to be taken by you in any way as indicating that the Court has any opinion as to the guilt or innocence of the defendants in this case and you are to draw no such inference therefrom. That determination is up to you and you alone based on all the facts in this case and the applicable law in these instructions.

Now bear in mind that you are here to determine the guilt or innocence of the two defendants on trial here from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are guilty. But if any reasonable doubts remain in your minds after

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impartial consideration of all the evidence in the

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case, of course, it is your duty to find the

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accused, and both of them as the case may be, not

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guilty.

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(Continued on next page.)

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Charge of the Court

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1 The verdict must represent the considered
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3 judgment of each juror. In order to return a verdict,
4 it is necessary that each juror agrees thereto.
5 Your verdict must be unanimous.

6 It is your duty as jurors, to consult with one
7 another and to deliberate with a view to achieving an
8 agreement, if you can do so without violence to
9 individual judgment. Each of you must decide the case
10 for yourself, but do so only after an impartial con-
11 sideration of the evidence in the case with your
12 fellow jurors. In the course of your deliberations,
13 do not hesitate to reexamine your own views, and change
14 your opinion, if convinced it is erroneous. But do
15 not surrender your honest conviction as to the weight
16 or effect of evidence, solely because of the opinion
17 of your fellow jurors, or for the mere purpose of
18 returning a verdict.

19 Remember at all times, you are not partisans.
20 You are judges -- judges of the facts. Your sole
21 interest is to seek the truth from the evidence in
22 the case.

23 There is nothing particularly different in the
24 way a jury should consider the evidence in a criminal
25 case, from that in which all reasonable persons treat

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any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt say so. If not so proven guilty, say so.

You must render a verdict with respect to each of the four counts of the indictment that the particular defendants are charged therein. Bear in mind that the defendant Daniel Lee Rucker is charged with each of the four counts. The defendant Eugene Smith is only charged with Count two and four.

If it becomes necessary and you feel you must have it, you may request a copy of the indictment in this case and I will furnish you with a copy. I will furnish you with a copy, but I will admonish you with so doing you must bear in mind the indictment does not constitute evidence or proof of any kind in the case.

If any reference by the Court or by counselor of matters of evidence does not coincide with your own

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recollection, it is your recollection which controls during your deliberations.

The punishment provided by law for the offenses as charged in the indictment is a matter exclusively within the province of the Court. It should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon returning to the jury room number one, the woman in the sweater closest to me will act as your forelady unless she chooses not to do so. If she chooses not to do so then you will elect a person from amongst yourselves, but the forelady or foreperson will preside over your deliberations and will be your spokesman here in Court.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a Deputy Marshal signed by your foreperson, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than by a signed jury writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise then in writing, or orally here in open

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Court.

You will note from an oath which will be taken shortly by the deputy marshals in this case that they too, as well as all other persons, are forbidden to communicate in any way or manner with a member of the jury on any subject touching the merits of the case.

Bear the following in mind, which is close to the last words on the subject, that you are never to reveal to any person -- not even to me the Court -- how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict. In other words, do not send me a note saying we stand such and so for this and that. Don't give me any numerical indication of how you stand one way or the other.

If it comes to pass that you have reached a hopeless deadlock, send me a note saying we are in a hopeless deadlock. And when you reach a unanimous verdict you write me a note and say you reached a unanimous verdict. Don't tell me what the verdict is in that note. You announce that when being questioned by the Deputy Clerk after

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you are recalled in the Court to announce your verdict and your Foreperson will announce the verdict.

All right, now, ladies and gentlemen, those are the instructions of the Court. I must take about two or three minutes with the attorneys and then you will be recalled and hopefully be able to get some lunch. Don't discuss the case in the short recess.

(At this point the jury leaves the courtroom:)

THE COURT: All right, gentlemen.

MR. LARIMER: Your Honor, on behalf of the defendant Rucker I object to the Court's instructions on that the defendant's interest is greater in sum or substance than any other witness. I think that unduly directs attention to the defendant because they chose to testify.

I also object as I did previously to any instructions on the consciousness of guilt, especially as to Mr. Rucker. I don't think there is any testimony or evidence concerning Mr. Rucker that could warrant an instruction on his fabrication or consciousness of guilt. To me the jury

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2 might believe that the Court feels that simply
3 because Mr. Rucker testified and gave a story in
4 variance with the prosecution witness, that
5 that was fabricated.

6 THE COURT: I don't think that talks about
7 conduct to fabricate evidence and I think the jury
8 could take the conduct if they accept the prosecu-
9 tion's version that he attempted to get someone
10 to fabricate evidence in his behalf yesterday.
11 They could take that as consciousness of guilt.
12 And I gave it with that thought in mind though,
13 of course, I think it applies much more to spec-
14 ifically the defendant Smith.

15 MR. LARIMER: I object to the introduction
16 of that testimony as being not admissible as
17 rebuttal testimony, but the Court notes otherwise.
18 I believe Mr. Wolford has a couple of requests
19 which I would suspect I will join in also.

20 MR. WOLFORD: First of all I would join in
21 those two exceptions that Mr. Larimer has taken.
22 Furthermore, your Honor, in my request charge which
23 I suppose I now ought to have marked as an exhibit.

24 THE COURT: You need not do so. That is
25 part of the Court's record.

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MR. WOLFORD: I have run into problems before.

THE COURT: You may if you want to.

MR. WOLFORD: As long as they are considered part of the Court's record and state in the record here now.

THE COURT: I have not stuck them in here yet, but they are in my charge, but I will put them in right now.

MR. WOLFORD: On page three under the heading of reasonable doubt I do not recall you reading the statement that appears on page three in the second paragraph.

THE COURT: I don't believe it is necessary. I said that I prefaced each of the essential elements beyond a reasonable doubt.

MR. WOLFORD: Well, the only thing I would request is that the Court read to the jury the statement if the jury views the evidence in the case as reasonably admissible either of two conclusions, one of innocence, the other of guilt, the jury should of course adopt the conclusion of innocence --

THE COURT: I see what you are saying. No,

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Charge of the Court

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I think my charge covers that in other words. I have had that impressed upon me before and the Court of Appeals has then taken exception to that.

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MR. WOLFORD: All right. Okay.

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MR. WELCH: I have no requests, no further requests, your Honor.

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THE COURT: Now gentlemen, I think what I will do is swear in the marshals and unless you have some objection, let the alternates go to lunch with the jury because they will not be discussing the case at lunch and then just bring back the 12 jurors who are going to deliberate and bring them back here. Does anyone object to that procedure?

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MR. LARIMER: I have nothing on that point.

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MR. WELCH: I have no objection to that.

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THE COURT: I am going to give them the option, of course, whether they want to go for lunch. I usually do.

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MR. LARIMER: I would make two requests. I think the jury should have the indictment whether they request it or not. Number two, my discussions yesterday concerning my view of the intense question as to count one, I continue my objection as

Charge of the Court

to the Court's understanding and position on that. I didn't think it was necessary to raise that objection again.

THE COURT: I am fully mindful of your position on that. I have considered it overnight. I have looked at particularly the Court cases on aiding and abetting. I cannot recall the name, but I am convinced that I am right on it. Let's bring the jury back.

MR. WELCH: Well, before they come back the Government's position is that we oppose the jury getting that indictment unless they ask for it because that indictment is confusing. Your Honor's instructions on aiding and abetting, it will unduly highlight it.

THE COURT: I have not directed that it go to them. I have indicated to them that they can have it if they want just like they can have the exhibit if they want. And if they ask for it I am going to send it to them.

MR. WOLFORD: I also request they be given it without their request.

(At this point the jury enters the courtroom.)

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Charge of the Court

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THE COURT: All right, now marshals, do you want to step forward and be sworn please.

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(At this point the marshals are sworn by the Clerk of the Court.)

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I don't know Miss Wright whether they are to report back here.

THE CLERK: They will be notified whether they are to return.

THE COURT: You will be notified as to

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whether to return, but otherwise your service is

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terminated. The twelve jurors, assuming that none

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of you get sick during lunch, in which case

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alternate number one would immediately jump into

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the place of any sick juror, but assuming you are

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all healthy at the end of the lunch hour you

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should return here and you may begin discussing

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the case, but not before. All right.

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(At this point the jury leaves the court-

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room.)

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THE COURT: I think gentlemen we are probably

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pretty safe until 2:30, 2:45. It is going to take

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... them at least an hour to go out and order lunch

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and get it all served and so forth. So, you can

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judge your time accordingly. Mr. Smith, as far

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as I am concerned, you are back on bail. There is

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no need to have you present here from this point

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on. Of course, if you don't show up for the ver-

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dict, then you may have to take whatever conse-

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quences may fall from it, but as far as I am con-

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cerned, if you are late or if you voluntarily

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absent yourself from any further proceedings, that

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is on your shoulders, not mine. You are out of the

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custody of the marshals.

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THE DEFENDANT SMITH: Thank you.

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THE COURT: If you don't show up here and the jury comes back and asks a question or what have you, counselor will plan what prima facie will follow. So, you should listen to him, not me.

MR. WOLFORD: Just so it is clear, I take it as long as we are within five minutes or ten minutes of the courthouse that is sufficient, isn't it, or do you want us to remain here?

THE COURT: Well, I am willing to be governed by local practice. I will tell you what my rough schedule is. The Chief Judge and Judge Brieant are driving over here tonight. They will be here about 6:00 o'clock. I told them that I would have dinner with them and Judge VanGraffen. I suppose if the jury was still out and if you all wanted it that way, we can have dinner close by and we can go on and have the jury deliberate into the evening. If not, we can bring the jury back here tomorrow at 9:00 o'clock and have them start deliberating again. Maybe you want to discuss that. I will be eating dinner with them. I suspect they will be willing to accommodate you and not take me way out into the boondocks. So, I am available, at

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13 1 your disposal subject to the Chief Judge's wishes,
2 of course.

3 MR. LARIMER: Our offices are both within
4 five minutes walking distance. That was my point.

5 THE COURT: Give Miss Wright your telephone
6 number. If she is willing to do it on that basis
7 I don't care.

8 MR. WELCH: That is the usual practice.

9 THE COURT: I don't want to deprive you on
10 your first day of membership in the firm.

11 MR. WOLFORD: That is January 1st.

12 THE COURT: Is there anything else, gentlemen?

13 MR. WELCH: Your Honor's practice is to
14 come back and discuss with counselor any request
15 before the exhibits go in, I take it?

16 THE COURT: Well, exhibits I don't see why
17 you need me for exhibits unless you cannot agree.
18 Any exhibits Miss Wright could send them in as
19 long as she gets you to okay it. Okay?

20 THE ATTORNEYS: Fine.

21 (At this point there is a recess.)

22 THE COURT: I have a second note. The first
23 note as you know, asked for the indictment. I guess
24 we will send it in to them. The second note reads:
25 "Did the words, 'He did enter' mean that he had to

14 1 bodily enter the bank?" Would you mark this
2 Court's Exhibit No. 2. I propose to answer the
3 question no, and read them the instructions with
4 respect to essential elements in aiding and abetting.

5 MR. LARIMER: Would the Court just read the
6 note again or can I see it?

7 THE COURT: Yes, you may see the note.

8 MR. LARIMER: It does not indicate who he
9 is.

10 THE COURT: I know, but I think I can cover
11 it. I will read them the essential elements and
12 read them the instructions with respect to aiding
13 and abetting.

14 MR. LARIMER: I think that gets pretty close
15 to the problem I raised.

16 THE COURT: That is why you wanted to send
17 in the indictment. I told you how I ruled on the
18 question. There is no ambiguity about it.

19 MR. WOLFORD: My client is not charged in
20 the first count. Do you think it would be approp-
21 riate to ask what they say he --

22 THE COURT: I don't think it is material.
23 He means the defendant I assume. Otherwise they
24 would not ask the question.

25 MR. WOLFORD: I don't know.

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THE COURT: Well, I will raise the question

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here. Can I have the note.

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(At this point the jury enters the courtroom.)

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THE COURT: Now, ladies and gentlemen, I have

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your second note and it reads: "Do the words 'He did

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enter' in count one mean that he had to bodily enter

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the bank?" I assume when you say he, you mean the

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defendant Daniel Lee Rucker?

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MS. FORELADY: Yes.

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THE COURT: The answer is no. When I say

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no I am going to read to you the essential elements

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of the crime which must be proved beyond a reasonable

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doubt and my instructions with respect to aiding and

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abetting which I think must be read to you in con-

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nection with the answer no.

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The essential elements of the crime charged

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in count one of the indictment which must be proved

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beyond a reasonable doubt are: One. The act or

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acts of entering the particular bank. Two. Doing

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such act or acts with the intent to commit a felony

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affecting the bank. Three. Such felony being the

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taking by force, violence and intimidation in the

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presence of the employees of the bank, money belong-

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ing to and in the care, custody, control, manage-

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ment and possession of the bank. Four. The doing

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16 1 of such act or acts knowingly and willfully; and
2 Five. The bank being one that deposits of which
3 were insured by the FDIC.

4 I will repeat those essential elements.

5 One. The act or acts of entering a particular
6 bank.

7 Two. Doing such act or acts with the intent
8 to commit a felony affecting the bank.

9 Three. Such felony being the taking by
10 force, violence and intimidation from the presence
11 of the employees of the bank money belonging to
12 and in the care, custody, control, management and
13 possession of the bank.

14 Four. The doing of such act or acts knowingly
15 and willfully; and

16 Five. The bank being one that deposits of
17 which were insured by the FDIC.

18 As you will notice at the foot of counts
19 one, there is cited Section 2 of Title 18 of the
20 United States Code. That Section 2 of Title 18
21 provides that "Whoever commits an offense against
22 the United States or aids, abets, counsels, commands,
23 induces, or procures it commission, is punishable
24 as a principal." In other words, whoever does any
25 of those acts is punishable as if he had done it

1 himself.

17 2 "Whoever willfully causes an act to be done,
3 which is directly performed by him or another would
4 be an offense against the United States, is
5 punishable as a principal."

6 The guilt of a defendant may be established
7 without proof that the accused personally did every
8 act constituting the offense charged.

9 In other words, every person who willfully
10 participates in the commission of a crime may be
11 found guilty of that offense. Participation is
12 willful if done voluntarily and intentionally, and
13 with a specific intent to do something the law
14 forbids, or with a specific intent to fail to do
15 something the law requires to be done; that is to
16 say, with bad purpose either to disobey or to
17 disregard the law.

18 In order to aid and abet another to commit
19 a crime it is necessary that the accused willfully
20 associate himself in some way with the criminal
21 venture, and willfully participates in it as he
22 would in something he wishes to bring about; that
23 is to say, that he willfully seek by some act or
24 omission of his to make the criminal venture succeed.

25 An act or omission is willfully done, if done

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18 1 voluntarily and intentionally and with the specific
2 intent to do something the law forbids, or with
3 the specific intent to fail to do something the law
4 requires to be done; that is to say, with bad
5 purpose either to disobey or to disregard the law.

6 You of course may not find any defendant
7 guilty unless you find beyond a reasonable doubt
8 that every element of the offense as defined in
9 these instructions was committed by some person or
10 persons, and that the defendant participated in its
11 commission.

12 Mere presence at the scene of the crime and
13 knowledge that a crime is being committed are not
14 sufficient to establish that the defendant aided
15 and abetted the crime, unless you find beyond a
16 reasonable doubt that the defendant was a partici-
17 pant and not merely a knowing spectator.

18 All right.

19 (At this point the jury leaves the courtroom.)

20 MR. LARIMER: Could we have the Court's in-
21 dulgence for a moment?

22 THE COURT: Let's wait a couple of minutes.
23 We might get another note.

24 (At this point there is a recess.)
25

19 1 THE COURT: I thought we might have more
2 questions. I guess they won't be back for awhile.
3 If you want to go back to your office you can.

4 (At this point there was a recess.)

5 THE COURT: Gentlemen, it's getting close
6 to 6:00 o'clock and I wondered what you decided,
7 if anything, to recommend.

8 MR. WOLFORD: As I understand it I think we
9 are all in agreement we would prefer to have the
10 jury continue to deliberate this evening, after,
11 of course, going to dinner rather than going home
12 now and coming back tomorrow morning. We realize
13 we don't want to inconvenience anyone though --

14 THE COURT: Well, I made the suggestion
15 before I talked to Judge VanGraffen who has ideas
16 of somewhat different than what I had and the other
17 Judges have not arrived. It wouldn't preclude them
18 from deliberating. Indeed you could take a COD
19 verdict. As far as that goes we can open it
20 tomorrow morning if that were agreeable to everyone.
21 They could take a sealed verdict. The jury could
22 go on deliberating and if they reach a verdict
23 take a sealed verdict and open it tomorrow.

24 MR. WOLFORD: In other words, it wouldn't be
25 necessary for the Court to be present?

20

1 THE COURT: Yes. We can wait for the arrival
2 of the two other Judges and see what they have in
3 mind.

4 MR. LARIMER: The Court's schedule controls.
5 My problem is I made arrangements to go to Albany
6 tomorrow and spend the whole day with witnesses
7 on the case that I have to start next week. But
8 whatever the Court's feeling is. I would prefer
9 the jury to go on tonight.

10 THE COURT: Well, there are several ways
11 we can handle it. I suppose we can call the jury
12 in and ask them how it looks, whether they foresee
13 any resolutions say within the next half an hour
14 or so or something of that nature --

15 MR. LARIMER: I prefer not to do that.

16 THE COURT: And be guided accordingly. We
17 could, as I said, call them in and advise them
18 that we will hold them until 7:30 and then go to
19 dinner and after dinner or after 6:30 there will
20 be no reading, no questions or anything. If they
21 reach a verdict say prior to 10:00 o'clock we will
22 take a sealed verdict and open it tomorrow morning.
23 Such arrangement such as that. Would that be
24 satisfactory to your problem?

25 MR. LARIMER: No.

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21 1 THE COURT: What is your objection by my
2 calling in and requiring what their time schedule
3 looks like?

4 MR. LARIMER: I think that might possibly
5 put undue pressure on hold-outs, if there any.

6 THE COURT: I don't think so, to ask them
7 how they are doing. They might say I am hungry.

8 MR. WOLFORD: I suppose it is possible.
9 they might have arrived at a verdict on one of the
10 counts.

11 THE COURT: It is conceivable they might
12 have.

13 MR. LARIMER: I don't know what they could
14 say. I hope they will say Smith six to six or
15 something like that.

16 THE COURT: I usually say is there any
17 likelihood of your reaching a verdict within say
18 the next half an hour. Just say yes or no and
19 we will be guided accordingly on how to plan the
20 evening. We can do that by note --

21 MR. WOLFORD: Well, I don't really have any
22 problems with that.

23 MR. WELCH: Depending on the response we
24 can decide what else we have to do.

25 MR. WOLFORD: I don't have any problem with

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really sending in a note or questioning them as to their progress. I really don't feel that it intimidating. Maybe some could interpret it that way.

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THE COURT: No, I would give them cautionary instructions. Indeed, I can question them not by any display or looking around at other people to give any indication of their feelings or what have you, but just give me a non-committal answer as to how it looks say within the next half an hour.

12

MR. LARIMER: That you are interested in planning a dinner hour or something like that.

13

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MR. WOLFORD: I have no objections to that.

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THE COURT: The only thing is -- well, I could discuss it with the other judges and then let you know what their view is if they want to go out of time, which is what they had in mind apparently --

20

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MR. WOLFORD: Maybe your problem could be resolved if they respond.

22

THE COURT: Let's ask them.

23

(At this point the jury enters the courtroom.)

24

25

THE COURT: Now, ladies and gentlemen, I called you in and I will preface my remarks by

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23 1 giving you a few cautionary instructions. I don't
2 want you to, in response to my questions, show any
3 surprise or look at each other and what have you or
4 in any way misconstrue anything that I say. The
5 questions I am going to ask you, I don't intend to
6 put any pressure on you in any way, shape or form.
7 We are somewhat concerned about how to plan an
8 evening and so I ask the question solely in that
9 light, not with the thought that you should be
10 motivated to speed up, slow down or do anything
11 different than what you have been doing all along.
12 I will ask a very simple question of you, Madam
13 Forelady. First, I would appreciate a yes or no
14 answer if you could give it to me. Is there any
15 likelihood that you might reach a verdict say in
16 the next half an hour as far as you can see?

17 THE FORELADY: No.

18 THE COURT: Do you anticipate the need of
19 several hours, let's put it that way?

20 THE FORELADY: Probably.

21 THE COURT: All right. I think that is
22 about all I want to ask and don't misconstrue it.
23 I really want to know just how to plan the next
24 several hours. All right. You may go.

25 (At this point the jury leaves the courtroom.)

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MR. WOLFORD: That answers that.

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MR. LARIMER: I would like very much to go to Albany but this takes precedence and I will do whatever the Court wishes.

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THE COURT: Let's wait until the other Judge arrives and I will discuss it with you. As I told you earlier in the week my normal practice and particularly when I get an answer like that of several hours would be to send them home and come back tomorrow. I really think that this is what is called a declining curve.

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MR. LARIMER: They have been at it for three hours.

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THE COURT: You have got to remember they have been at it since 9:00 o'clock this morning in terms of mental cerebration and that is the thing you have to keep in mind. You fellows are fairly young and when your mental capacity is getting started at 9:00 o'clock in the morning until 11:00 o'clock in the evening, it is pretty good. But for most people who have not been trained that way the curve runs sort of up to say 3:00 o'clock and then starts back down again. And lawyers are one thing, doctors are a similar thing, but most people don't have that kind of training.

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24 1 So I am willing to give it a try with the Judges
2 and see what they say and persuade them to stay
3 around here. On the other hand I am not so sure
4 that it is the right thing to do. I mean it's
5 going to affect my plans. It does not really affect
6 my plans if I stay here another night. I was
7 planning on driving home tomorrow but I will drive
8 home on Saturday instead. What does your witnesses
9 situation look like for Albany?

10 MR. LARIMER: There are two State officials
11 that are testifying for us and I start the trial on
12 Tuesday. And there will be gaps in my trial the
13 following week because of some two holidays. But
14 these witnesses are not available on those holidays
15 or are not inclined to be available.

16 THE COURT: By State officials they wouldn't
17 be available on Saturday morning?

18 MR. LARIMER: Well, I don't have that much
19 control over them.

20 MR. WELCH: They are not cooperating witnesses?

21 MR. LARIMER: They are independent witnesses.
22 They are doing me a favor and they are very crucial
23 witnesses.

24 THE COURT: When does the case start, Tuesday?

25 MR. LARIMER: Tuesday morning.

(Continued on next page.)
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MR. LARIMER: Tuesday morning.

THE COURT: Is it a State Court of Administrative ---

MR. LARIMER: State, but I suppose conceivably is they deliberate tonight and they cannot reach a verdict and be back here tomorrow anyway --

THE COURT: It sounds like we may be faced with another hour anyway. Well, they seem quite firm in their estimate. You are not going to get a verdict here until they come back from dinner which is eight something, 8:15, we'll say a couple of hours probably until 10:15 the earliest tonight.

MR. LARIMER: Well, I don't mind waiting. But sometimes it has the affect of getting a verdict. But maybe that is not the best thing actually. Well, I don't want my schedule and problems to interfere with what the Court thinks is best or my colleagues.

THE COURT: I will tell you what I am going to do: I am going to wait until Judge Brieant arrives and discuss the situation with them. If they are inclined to go along with Judge Van Graffen's present suggestion -- well-I think it would be my natural inclination to maybe send them home. If not I will be just as happy to go across the street to the Americana Hotel.

MR. WOLFORD: Fine. So I assume they will be

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2 1 coming down here pretty soon.

2 THE COURT: They should be due about 6 o'clock.

3 (At th is point there is a jury note.)

4 THE COURT: The first question that they asked
5 is "Could we have clarification of aiding and abetting
6 and conspiracy?" I guess I can do that. I think the
7 firstser of the Government's proposed charge on
8 page two - well, there are two sentences that are
9 probably correct when slightly improvised. Aiding and
10 abetting is different from the charge of conspiracy
11 which is also charged in the indictment. The conspiracy
12 involves planning of a criminal act and aiding and
13 abetting involves participation in the criminal act.
14 I think I would have to add to that by saying in
15 conspiracy, reading them the definition of the conspiracy
16 constituting an agreement and so forth and reading
17 again what aiding and abetting constitutes.

18 Second, they say in that connection we are
19 having difficulty determining whether just walking and
20 talking with an individual is aiding and abetting. It
21 depends, of course, on what they are talking about.

22 Then they want Mr. Rivera's testimony, his
23 cross-examination by Mr. Larimer read. We will have
24 that done.

25 MR. WELSH: May I request your Honor, that the

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entire testimony of Mr. Rivera be read?

THE COURT: They didn't ask for it. They just asked for the Court's examination by Mr. Larimer.

MR. LARIMER: I have no objection to that.

THE COURT: I wouldn't think you would.

MR. LARIMER: As to the other two questions as to the difference between aiding and abetting and the conspiracy, I would request the Court to simply recharge as it did this morning on that element of the conspiracy and aiding and abetting.

THE COURT: I will. Not just the elements, but I am going to recharge on the definitions. What they want to do is distinguish the difference between the conspiracy, which is an agreement for criminal purposes and aiding and abetting which is the actual participation in the criminal act. It is two different things. Of course, you have got the overt act. There has to be an overt act which I will explain to them, I think I can explain it to them.

MR. LARIMER: As to the second request, as I understand it, walking and talking --

THE COURT: It depends on what is said.

MR. LARIMER: I would object to any I guess specific answers to that question, I think that invades their --

4 1 THE COURT: I am going to say if you want an answer
2 to that it's not in terms of a question. I will
3 answer the first question where they say could we
4 have clarification on aiding and abetting and con-
5 spiracy. I will give it to them. I will say does that
6 answer the first two questions that you proposed to me.
7 Then I will read them the balance. Let's get them in.

8 (At this point the jury enters the courtroom.)

9 THE COURT: I have your latest questions which
10 really come down to two questions. The first one is
11 could we have a clarification on aiding and abetting
12 and conspiracy. I will point out the difference between
13 the two for you. The next comment that follows that
14 I take it falls within the parameters of what I am
15 going to discuss with you. And I prefer not to comment
16 on it because I might be invading your province. Then
17 you ask for the cross-examination by Mr. Larimer of
18 Mr. Roberto Rivera which we will read to you.

19 Let me try, and I may be oversimplifying it,
20 so accept my definition in terms of the large defini-
21 tion I am going to give you when I read to you the
22 aiding and abetting charge again and a good portion
23 of the conspiracy charge.

24 In its broadest terms aiding and abetting is
25 participation. In its broadest terms a conspiracy is

5 1 a combination to plan a criminal act, let me put it that
2 way. Aiding and abetting I will define again for you,
3 but it essentially is a participation in a criminal
4 act itself. You can conspire to commit a criminal
5 act and if you commit an overt act in connection with
6 that conspiracy, even though you don't carry out the
7 criminal act itself, that may be sufficient to commit
8 the crime of conspiracy. To put it in its most
9 elementary terms, if you and I conspire to do some-
10 thing that is criminal in nature and one of us then
11 goes to the telephone and makes a telephone call in
12 furtherance of that conspiracy to commit the criminal
13 act and comes back and confirms it and we go ahead
14 with our plan, but we never complete the plan in the
15 sense that there is never a fulfillment or achievement,
16 he could be convicted of a conspiracy to commit the
17 criminal acts.

18 Aiding and abetting on the other hand and
19 particularly in this case we are talking about entering
20 the bank, it's a participation in letting in some
21 sort of assistance, whether it be by counselling or
22 advising, giving something or what have you, lending
23 some sort of assistance, wilful participation in the
24 entry of the bank with the intent to commit the felony.
25 That is in its broadest and simplest explanation.

Now, listen to the instructions I give you in that connection: Section 2 of Title 18 of the United States Code provides that -- and this is the aiding and abetting section again -- it provides:

"Whoever commits an offense against the United States, or whoever aids, abets, encourages, in other words, encourages, counsels, commands, induces or procures its commission is punishable as a principal."

The second paragraph of this section states:

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

In other words, every person who wilfully participates in the commission of a crime may be found guilty of that offense. Participation is wilful is done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a

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7 1 crime it is not necessary that the accused wilfully
2 associate himself in some way with the criminal
3 venture and wilfully participate in it as he would in
4 something he wishes to bring about; that is to say,
5 that he wilfully seek by some act or omission of his
6 to make the criminal venture succeed.

7 An act or omission is wilfully done, is done
8 voluntarily and intentionally and with the specific
9 intent to do something the law forbids, or with the
10 specific intent to fail to do something the law requires
11 to be done; that is to say, with bad purpose either
12 to disobey or to disregard the law.

13 You of course may not find any defendant guilty
14 unless you find beyond a reasonable doubt that every
15 element of the offense as defined in these instructions
16 was committed by some person or persons, and that
17 the defendant participated in its commission.

18 Mere presence at the scene of the crime and
19 knowledge that a crime is being committed are not
20 sufficient to establish that the defendant aided and
21 abetted the crime, unless you find beyond a reasonable
22 doubt that the defendant was a participant and not
23 merely a knowing spectator.

24 Keep in mind that this could be anyone who
25 aids, abets, counsels, commands, induces or procures

8 1 its commission as well as, of course, one who wilfully
2 causes an act or acts to be done. Now, that is on
3 aiding and abetting.

4 Now, on conspiracy. A conspiracy is a combina-
5 tion of two or more persons, by concerted action to
6 accomplish some unlawful purpose. So, a conspiracy
7 is a kind of partnership in criminal purposes, in
8 which each member becomes the agent of every other
9 member. The gist of the offense is a combination or
10 agreement to disobey or to disregard the law.

11 Mere similarity of conduct among various persons,
12 and the fact they may have associated with each other,
13 and may have assembled together and discussed common
14 aims and interest, does not necessarily establish
15 proof of the existence of a conspiracy. Mere associa-
16 tion may not, in and of itself, be the basis for an
17 inference of guilt of a conspiracy.

18 However, the evidence in the case need not show
19 that the members entered into any express or formal
20 agreement, or that they directly, by words spoken or
21 in writing, stated between themselves what their
22 object or purpose was to be, or the details thereof,
23 or the meetings by which the object or purpose was to
24 be accomplished.

25 What the evidence in the case must show beyond a

9 1 reasonable doubt, in order to establish proof that a
2 conspiracy existed, is that the members in some way
3 or manner, orthrough some contrivance, positively or
4 tactily came to a mutual understanding to try to
5 accomplish a common and unlawful plan.

6 In your consideration of the evidence in the
7 case as to the offense of conspiracy charge, you should
8 first determine whether or not the conspiracy existed
9 as alleged in the indictment. If you conclude that
10 the conspiracy did exist, you should next determine
11 whether or not the accused wilfully became a member
12 of the conspiracy.

13 If it appears beyond a reasonable doubt from
14 the evidence in the case that the conspiracy alleged
15 in the indictment was wilfully formed, and that a
16 defendant wilfully became a member of the conspiracy
17 either at its inception or afterwards, and that
18 thereafter one or more of the conspirators
19 committed one or more overt acts in furtherance of
20 some object or purpose of the conspiracy, then there
21 may be a conviction even though the conspirators may
22 not have succeeded in accomplishing their common object
23 or purpose, and in fact, may have failed in so doing.

24 The extent of any defendant's participation
25 moreover is not determinative of his guilt or innocence.

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10 A defendant may be convicted as a conspirator
2 even though he may have played only a minor part in
3 the conspiracy.

4 An overt act is any act knowingly committed by
5 one of the conspirators in an effort to affect or
6 accomplish some object or purpose of the conspiracy.
7 The overt act need not be criminal in nature, if
8 considered separately and apart from the conspiracy.
9 It may be as innocent as the act of a man walking
10 across the street, or driving an automobile, or using
11 a telephone. It must, however, be an act which follows
12 intent toward accomplishment of the plan or scheme.
13 It may be knowingly done in furtherance of some object
14 or purpose of the conspiracy charged in the indictment.

15 (continued next page)
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CF:RMG
T11/1

1 Now, that is an abbreviated summary of the
2 length of the charge I gave you on conspiracy,
3 page 27. You may have the whole charge on conspir-
4 acy be read to you if you want. I think that
5 abbreviates some of the highlights of it.

6 MR. LARIMER: Before we read the testimony
7 could be approach the bench?

8 THE COURT: Yes.

9 (A side bar discussion.)

10 MR. LARIMER: In light of the Court's
11 instructions concerning aiding and abetting and
12 as I recalled the Court's language that the Court
13 acquainted aiding and abetting with one who willfully
14 caused another to commit the crime, I request the
15 Court to balance that by instructing the jury that
16 if they find that the defendant did not cause the
17 people who committed the robbery to do it, that
18 those people did it of their own volition, then
19 they should find the defendants not guilty.

20 THE COURT: No, then I have to go through
21 the whole charge on what your theory is at this
22 point.

23 MR. LARIMER: I think you are undersizing
24 --

25 THE COURT: No, I didn't. I talked about

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2 1 aiding and abetting, that is all I was given. The
3 way things are at the moment I can go out with the
4 other judge and be on call and come back. So, we
5 can read for awhile now or read after supper. I
6 don't think you are going to get much done anyway.

7 MR. LARIMER: It will be somewhat burdensome
8 for them to sit here for another hour before eating
9 and listening to this. Can I have a minute with
10 Mr. Wolford?

11 THE COURT: Yes.

12 MR. WOLFORD: Subject to the Court's schedule
13 I think Mr. Larimer and I have no objection to
14 sending them home and reading the testimony in
15 the morning. I have no objection to any testimony
16 being read tonight. If the Court feels it's more
17 appropriate to send them out to dinner and bring
18 them back and have it read --

19 THE COURT: I frankly think if we bring them
20 back at 8:15 and take an hour for reading testimony
21 then I think it is very unlikely that we will finish
22 tonight. I am willing to do it, I mean, you have
23 your thing in mind apparently, if it is okay with
24 the other Judges --

25 MR. WOLFORD: I have nothing else either.
Don't misunderstand me. I am willing to go along

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with the concensus here.

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MR. WELCH: I believe the jury is willing
to work tonight.

3

4

THE COURT: We will read until 7:00 o'clock
and then send them out for dinner and come back
and read for --

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7

MR. LARIMER: I suggest you send them out
now if they are as tired as I am.

8

9

THE COURT: I am inclined to wait and use
that time for starting to read.

10

11

(At this point cross-examination by
Mr. Larimer of Roberto Rivera is read to the jury
by the Court Reporter.)

12

13

14

THE COURT: Gentlemen, I am going now. I will get
back as soon as I can.

15

16

MR. WOLFORD: There will probably be a dinner
to at least a quarter to 9:00.

17

18

THE COURT: I guess to a quarter to 9:00 at
the very least 9:00 o'clock.

19

20

MR. WELCH: Could she resume the reading
of the cross-examination?

21

22

THE COURT: It is all right if everyone
stipulates to it.

23

24

ALL THE ATTORNEYS: I have no objection.

25

MR. WELCH: Just finish the reading of the

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cross-examination of Mr. Larimer.

THE COURT: Then you can call me if you want.

MR. LARIMER: I have no objection to that. The only question is whether there was any recross and I don't believe there was. Did you redirect?

MR. WELCH: Very little if I did. I don't recall any.

THE COURT: If you have any second qualms about it, just tell Miss Wright and she will get in touch with me. If anything comes up in the course of the reading and you want to stop or have me here I will get here.

ALL THE ATTORNEYS: Fine.

THE COURT: If everybody is agreeable --

MR. WELCH: While the Court is here I have no objection, if there was recross, if that gets read also.

MR. LARIMER: Fine. I would request it.

THE COURT: She can check.

MR. WOLFORD: I take it your plans are, your Honor, to have them deliberate to --

THE COURT: To doomsday now.

(At this point there is a dinner recess.)

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(At this point the jury enters the courtroom,
and continued reading of Mr. Larimer's cross-exam-
ination of Roberto Rivera.)

2

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(At this point the jury retires to deliberate.

5

THE COURT: Ladies and gentlemen, we have a
verdict. Do you want to label that?

6

7

THE CLERK: Yes.

8

THE COURT: Exhibit marked.

9

(The jury enters the courtroom.)

10

THE COURT: Now ladies and gentlemen, I have
your note which says you have reached a verdict.
Madam Forelady, I assume it's a unanimous verdict
on the part of all the jurors, is that correct?

11

12

13

14

MADAM FORELADY: Yes.

15

THE COURT: Would you please rise and all
answer the questions posed to you by Miss Wright.
She will ask you with respect to each count and
each defendant what your verdict is.

16

17

18

19

THE CLERK: How do you find the defendant
Rucker on count one?

20

21

MADAM FORELADY: Guilty.

22

THE CLERK: How do you find the defendant
Rucker on count two?

23

24

MADAM FORELADY: Guilty.

25

THE CLERK: How do you find the defendant

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6 1 Smith on count two?

2 MADAM FORELADY: Guilty.

3 THE CLERK: How do you find the defendant
4 Rucker on count three?

5 MADAM FORELADY: Guilty.

6 THE CLERK: How do you find the defendant
7 Rucker on count four?

8 MADAM FORELADY: Guilty.

9 THE CLERK: How do you find the defendant
10 Smith on count four?

11 MADAM FORELADY: Guilty.

12 THE CLERK: Please listen as the Court records
your verdict.

13 THE COURT: You find the defendant Rucker guilty
14 on count one; you find the defendant Rucker guilty
15 on count two; you find the defendant Smith guilty on
16 count two; you find the defendant Rucker guilty on
17 count three; you find the defendant Rucker guilty on
18 count four; you find the defendant Smith guilty on
19 count four; is your verdict as the Court has recorded
20 it?

21 THE FORELADY: Yes.

22 THE COURT: Madam Forelady, will you please
23 be seated. I will ask Miss Wright and the Deputy
24 Clerk to poll the jury. She will ask each of you
25 whether that is your verdict and that will be with

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7 1 respect to all of the counts and you do not need
2 to rise. Just answer yes or no.

3 THE CLERK: Do you want me to repeat the
4 verdict?

5 THE COURT: Ask if that was their verdict.

6 THE CLERK: Is your verdict as the Court has
7 recorded it, Juror No. One?

8 JUROR NO. ONE: Yes. (W. C. C. C.)

9 THE CLERK: Juror No. Two?

10 JUROR NO. TWO: Yes.

11 THE CLERK: Juror No. Three?

12 JUROR NO. THREE: Yes.

13 THE CLERK: Juror No. Four?

14 JUROR NO. FOUR: Yes.

15 THE CLERK: Juror No. Five?

16 JUROR NO. FIVE: Yes.

17 THE CLERK: Juror No. Six?

18 JUROR NO. SIX: Yes. (W. C. C. C.)

19 THE CLERK: Juror No. Seven?

20 JUROR NO. SEVEN: Yes.

21 THE CLERK: Juror No. Eight?

22 JUROR NO. EIGHT: Yes.

23 THE CLERK: Juror No. Nine?

24 JUROR NO. NINE: Yes.

25 THE CLERK: Juror No. Ten?

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT

225 CADMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

852-7105

8 1 JUROR NO. TEN: Yes.

2 THE CLERK: Juror No. Eleven?

3 JUROR NO. ELEVEN: Yes.

4 THE CLERK: Juror No. Twelve?

5 JUROR NO. TWELVE: Yes.

6 THE COURT: All right, ladies and gentlemen.
7 I should maybe say this to you; it's not too often
8 that I keep a jury until the wee hours of the
9 evening as I have required you to stay. Usually I
10 send the jury home and bring them back the next day.
11 Owing to the pressures of time, counselors and the
12 Court and other people, I have imposed upon you
13 beyond what I have regarded the normal call of your
14 duty and I want to say thanks to you for your cooper-
15 ation in going on through these extra hours. I
16 also want to thank you on behalf of all of the
17 residents of this district for the attention you
18 paid to this case during the last week and for the
19 hard work that I am sure you had to put in not only
20 during the last several hours, but from 9:00 o'clock
21 this morning right on to 11:10 o'clock tonight.

22 Until you have served as a juror, as you just
23 have on a criminal case, I don't think you can know
24 how hard a job it is to serve as a juror, particu-
25 larly in the deliberation part of the case. It is

EASTERN DISTRICT COURT REPORTERS

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9 1 a very difficult task I am sure you know or realize.
2 You are the heroes of our democratic system and for
3 your services all of your fellow citizens are very
4 grateful indeed. You go with the thanks of the
5 Court and all of the citizens of this district as
6 I have just said. I don't believe we will have
7 any further services required of you this week and
8 probably not for some time anyway. I guess they
9 will be notified.

10 THE CLERK: Yes, they will be notified.

11 THE COURT: I understand you all made
12 arrangements to get home. If any of you have not
13 we can perhaps be of assistance if you are not all
14 taken care of, but thanks very much.

15 (At this point the jury leaves the courtroom.)

16 MR. LARIMER: Your Honor, if I may on behalf
17 of the defendant Rucker I would move at this time
18 or renew my motion for judgment of acquittal.

19 THE COURT: Now, Mr. Larimer, I don't want
20 to put you any kind of a spot, but you may if you
21 wish and I leave it up to you, reserve your motion
22 until just before sentence. I put it to you that
23 way because you may want to give some thought to
24 any motions that you have. You can make them now
25 if you want.

United States of America vs.

United States District Court for

DANIEL LEE RUCKER

WESTERN DISTRICT OF NEW YORK

DEFENDANT

FILED

NOV 30 8 44 AM '77 TICKET NO. DL CR. 76-181

JUDGMENT AND PROBATION COURT DOCUMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
November 21, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

David Larimer, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYThere being ~~XXXXX~~ verdict of☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of bank robbery by force and violence (Cts. 1 & 2), in violation of T. 18, U.S.C., Sect. 2113(a); conspiracy to commit bank robbery by force and violence (Cts. 3 & 4), in violation of T. 18, U.S.C., Sect. 371.

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby ~~XX~~ sentenced as follows: The Court: It is adjudged on Count 1 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of twelve yrs. & that the deft. shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the Parole Commission may determine. It is adjudged on Count 3 of the indictment that the deft. is hereby comm. to the custody of the A/G or his author. representative for imprisonment for a term of five yrs. & that deft. shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the PCom. may determine. Such sentence imposed under Count 3 to run concurrently with the sentence imposed under Count 1. It is adjudged on Count 2 of the indictment that the deft. is hereby comm. to the custody of the A/G or his author. representative for imprisonment for a term of twelve yrs. & that deft. shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the PCom. may determine. Such sentence imposed under Count 2 to run concurrently with the sentence imposed under Counts 1 & 3. It is adjudged on Count 4 of the indictment that the deft. is hereby comm. to the custody of the A/G or his authorized representative for imprisonment for a term of 5 yrs. & that deft. shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the PComm. may determine. Such sentence imposed under Count 4 to run concurrently with the sentences imposed under Counts 1, 3 & 2 of the indictment.

In addition to the above conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the back of this document be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATIONCOMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General or his authorized representative.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

THOMAS C. PLATT, Jr., U.S. District Judge (sitting by Design.)
on November 21, 1977

United States District Court for

United States of America vs.

WESTERN DISTRICT OF NEW YORK

DEFENDANT

EUGENE SMITH

Nov 30 8 44 AM '77

U.S. DISTRICT COURT
W.D. N.Y.

DOCKET NO. CR. 76-181

JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
November 21, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Michael Wolford, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYThere being a ~~XXXX~~ verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of bank robbery by force and violence (Ct. 2), in violation of T. 18, U.S.C., Sects. 2113(a) & 2; conspiracy to commit bank robbery by force and violence (Ct. 4), in violation of T. 18, U.S.C., Sect. 371.

SENTENCE
OR
PROBATION
ORDERThe court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that. The defendant is hereby ~~convicted~~

sentenced as follows: The Court: It is adjudged on Count Two of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of six years and that defendant shall become eligible for parole, under 18 U.S.C. 4205(b)(2) at such time as the Parole Commission may determine.

It is adjudged on Count 4 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of five years and that defendant shall become eligible for parole, under 18 U.S.C. 4205(b)(2), at such time as the Parole Commission may determine. Such sentence under Count Four to run concurrently with the sentence imposed under Count Two of the indictment.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and any time during the probation period or within a maximum probation period of five years permitted by law, may issue warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

THOMAS C. PLATT, Jr., U.S. District Judge (sitting by Design.)

Date November 21, 1977

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NOS. 77-1478, 77-1479

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

DANIEL LEE RUCKER and EUGENE C. SMITH,

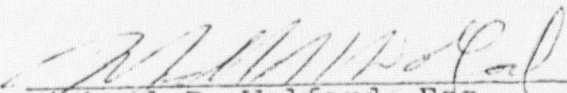
Defendants-Appellants.

CERTIFICATE OF SERVICE

I certify that on March 20, 1978, I caused eight (8) copies of the BRIEF FOR THE DEFENDANT-APPELLANT EUGENE C. SMITH and eight (8) copies of the JOINT APPENDIX FOR THE DEFENDANTS-APPELLANTS to be served by mail, postage, prepaid upon the following:

Eugene C. Welch, Esq.
Assistant U.S. Attorney
233 U.S. Courthouse
100 State Street
Rochester, New York 14614

David G. Larimer, Esq.
240 Reynolds Arcade Building
Rochester, New York 14614


Michael R. Wolford, Esq.
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